The Right Hon'ble Sir Edward Ryan

CASES OF HINDU LAW

BEFORE H. M. SUPREME COURT, DURING THE FIRST THIRTY YEARS OF THE COURT'S ESTABLISHMENT;

IN CONTINUATION OF THE SECOND EDITION OF

DECISIONS OF THE SUPREME COURT &c. BY T. C. MORTON, ESQ.

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CALCUTTA:

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PREFATORY REMARKS.

But few of the following collection of cases are noted in the first edition: those few are re-written, upon reference as well to the MSS. originally consulted as to the Court records, and seldom as mere memoranda or notes of decisions. The identity therefore of this volume with the corresponding portion of Mr. Morton's work is little more than formal.

The length and importance of the cases are the editor's motive and apology for giving them as an instalment. Not only are the earlier decisions less known, but they have a peculiar value; in that they embrace the ten years of Sir Wm. Jones' judicial labour, and that they furnish the best evidence of the manner in which the able judges (with a bar not less able) who were first called upon to administer the Hindu law of the Supreme Court, construed and dealt with many prominent doctrines of that law.

Documentary evidence and other explanatory matter, which, although useful, may not be strictly essential to the comprehension or use of the text, will be given in Notes appended (as to former titles) to the cases of Hindu law when complete; and in which Notes a review of the subject will be attempted.

An exception has been made of two statements laid before the Court pundits with their opinions thereon, from Notes IX and XIII, which are now published.

April 1853.

TABLE OF CASES.

Hindu Law (a)

AGA HAJEE MAHOMED *v.* JUGGUT SEAT COSSAUL CHUND.

(1779)

Pleading.
The custom of Hindus, and the defendant's liability under it, must be averred and shewn in the plaint. (*b*)

Hyde's notes (*c*). July 19, 1779.

ASSUMPSIT for jewels &c. (to the amount of fifteen lacs Sa. Rs.) sold and delivered to the defendant's father. The plaint, which was filed 3d August 1775, described the defendant, in its commencement, as "eldest son, heir at law, and personal representative of Juggut Seat Mattaub Roy according to the custom of Bengall from time immemorial." There was no promise laid by the defendant, but a breach in non-payment by him since his father's decease as well as by the father in his life time.

THE COURT (*d*) held, that the plaint must in due form set forth the liability of the defendant to pay his father's debts, viz. that there was such a custom among the Hindus, and then bring the case within the custom, and must also aver, that the son possessed himself of effects of his father to the amount of the debt demanded. The Court observed, that possibly the custom of the Hindus might charge the son with all his father's debts, though he possessed himself of a very small sum, much less than sufficient to pay any one of his father's debts, yet that custom could hardly be admitted in this Court, because by our law, if the son does not pay he may be imprisoned, which is not probably the law of the Hindus. (*e*)

(*a*) Note I.

(*b*) This of course did not apply after st. 21 Geo. III. c. 70.

(*c*) corrected by the proceedings of record.

(*d*) Impey C. J., Chambers and Hyde Js.

(*e*) Mr Justice Hyde adds, "Impey C. J. on a former occasion said,—the proper way is, to charge the defendant as executor, and if he pleads he is not executor, then you charge him with possessing himself of the goods of the father and therefore liable as executor de son tort." Issue was joined in this case in July 1776: judgment of nonpros had been signed, which must of course have been set aside. It appears from the learned judge's note that, in consequence of the above remarks and resolution of the Court, the cause, which was on the board for trial, was struck out by the plaintiff's attorney.

DOE DEM. RAMNAUT SEAL *v.* BULORAM CHUNDER. (1780)

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Parceners.
In ejectment for property of an undivided family of brothers, the demise should be joint, although actual possession has been in one only. (*a*)

Hyde's notes.
July 6, 1780.

THE lessor of the plaintiff was proved to have been in possession: but it appeared, that he and his two brothers, one of whom was alive at the date of the demise, were an undivided family.

THE COURT (*b*) held, that the possession of one being the possession of all, the demise should have been by all the brothers then living. (*c*)

Nonsuit.

DOE DEM. JOYNARAIN GOSAUL *v.* HENRY WATSON. (1780)

Sale of land.
A general agent or manager of a Hindu sells, to a Hindu, and signs a bill of sale, as agent for his principal [A by the pen of B], of his principal's land, and gives possession to the purchaser: the principal afterwards verbally assents. Held; sufficient proof of conveyance, in ejectment against a stranger.

S. C. Records.
Nov. 17, 1780.

THE lessor of the plaintiff claimed under an instrument of sale of which the following is a translation:

Sree Sree Krisnojee.

SREE CAMDEB PODDAR
by the pen of
ANDERAM DOSS.

To the powerful Sreejoot Joynarain Gossaul benevolent.

I Sree Camdeb Poddar write this bill of sale of the *aulaut* of my ground to the purport as follows: The ten cottahs of ground specified in my pottah within the gunge of Kidderpore in the

(*a*) This land was in Calcutta. In *D. dem. Prawnaut Tewarry* v. *Choyton Sean*, which was for land in the mofussil, Bengal, tried Dec. 1779, the decision appears to have proceeded on like grounds. Note II.

(*b*) Impey C. J., Chambers and Hyde Js.

(*c*) Such in those days was the English rule (per Sir V. Gibbs A. G. in *D. dem. Massock* v. *Read*, 12 E. 61).

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district of Calcutta the *rioty aulaut* (*a*) and trees growing upon the raised ground the whole together on receipt of (80) eighty rupees the full value thereof I have given unto you of my free will—you will get my name erased from the Sircar, cause a pottah to be made in your name. I have no longer any claim to the land or the rents thereof and if at any time, I, my sons, brothers, nephews, or their descendants ever make a demand the same is false, I have therefore sold the *aulaut*. 11th Assin 1175.

Witnesses, &c.

Possession was given to the purchaser, and he held the premises until forcibly ejected by the defendant, under an alleged paramount claim. At the trial, on the 14th November, after the case on both sides had been heard, the following order was made, and the cause adjourned:

IT IS ORDERED that the following question be put by Mr. Wm. Chambers the interpreter of the Court to the Pundits—A a Hindoo possessed of lands gives verbal orders to his agent B for the general transaction of all his business; B executes a *khurreedgee* or bill of sale of the land, for the consideration of a sum of money, to C a Hindoo of the age of sixteen years, before two witnesses, and signs it thus: "A by the pen of B." The purchase money is carried by B to the account of A; the servants of C are put into possession of the lands by B: A afterwards verbally assents to the sale. Is any and what interest conveyed to C?

Witness Sir Elijah Impey, &c.

It does not appear from the proceedings extant what was the answer of the Pundits; but upon the 17th of the same month the Court gave (*b*)

Judgment for lessor of plaintiff.

(*a*) A *rioty aulaut* comprehends all that is contained in a certain spot of ground, such as houses, plants, trees, &c., which the tenant had added to it by his own industry. *Translator's note.*

(*b*) Mr. Justice Hyde's note is:—Judgment for the plaintiff on the opinion of the Pundits.

DOE DEM. MODUN MOHUN CORFORMAH *v.* NUNDOCOMAR CORFORMAH. (1780)

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Parceners.
Can one member of an undivided family maintain ejectment against another? —a question for the Pundits. (*a*)

Hyde's notes.
Nov. 22, 1780.

THIS action was to recover the upper rooms of a house. It appeared that, about seventy years before, the house was built by four brothers, Hindus, who constituted an undivided family. The family had ever since continued undivided. It was objected, that ejectment does not lie by one joint tenant against another: the question was, by the Court,

Reserved for the Pundits. (*b*)

(*a*) Note II.

(*b*) The result does not appear. In the present day, the matter would be treated as between English parceners or joint-tenants. But the claim in this case seems to have been for a specific portion of the subject of joint property, not for an unseparated share of it. The same complaint appears to have been made two years previously, in another shape. A plaint was filed in June 1778, stating a forcible eviction from this plaintiff's dwelling house by this defendant, who had "made and erected divers walls, partitions and divisions therein and much injured and damaged the same house;" the general issue was pleaded and issue joined: there is no trace of further proceeding in that action. The resort to Pundits in the present case argues, that the difficulty felt had no reference to the artificial character of the remedy. In the Company's courts an analogous proceeding is frequent, e. g. *Bhowanee Buksh* v. *Kheit Sing*, 3 S. D. A. rep. 202; in this, the order was,—that the respondent should deliver over possession of one-third of the talook B to the appellant, paying him the proceeds of the same from the time, &c.: in *Koshul Chuckurwutty* v. *Radanath Chuckurwutty*, 1 S. D. A. rep. 335, the property was the joint acquisition of plaintiff and defendant, the latter having contributed a larger proportion of capital, but the plaintiff had given labour also,—plaintiff had judgment for one-third, with proportionate mesne profits from time of ouster. See also *Jadoo Ram Das* v. *Obhye Ram Das*, 2 S. D. A. rep. 77. *Surroop Sing* v. *Dowkul Sing* 4 S. D. A. rep. 91. *Byram Sing* v. *Seebsehai Sing*, 6 S. D. A. rep. 65.

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Partition. (*a*) Partition may be made during the period that the family are dispossessed.

Hyde's notes. Jan. 14, 1782.

DOE DEM. CHOYTON CHURN SEAT AND BURROCHURN SEAT *v.* JOYNARAEN GHOSAL. (1782)

THIS action was to recover one begah and nineteen cottahs at Sootanuty in Calcutta. It was tried 4th July 1781, when a question was reserved for the Pundits.

The opinion given by them was, that undivided brethren might, although out of possession of their land, make a division of it, and might then sue, either severally for their shares, or jointly.

IMPEY C. J. now delivered the judgment of the Court (*b*) for the plaintiff: the Court being of opinion, that the answer of the Pundits would sufficiently authorize a departure from the strict rule of the English law, which required the parties to be in possession to make a partition of their lands. The Chief Justice in giving judgment remarked, that this decided nothing about Hindu brothers being obliged to join in the demise or not, in common cases of suing for their land (*c*).

Judgment for lessor of plaintiff.

The statute 21 Geo. III, ch. 70, enacting the observance of the laws and usages of Gentus in certain cases, was promulgated in Calcutta in the month of July 1782. (*d*)

(*a*) Note II.

(*b*) Impey C. J. and Hyde J.

(*c*) Seemingly forgetful of the case *D. d. Ramnaut Seal* v. *Bulram Chunder*, supra. p. 273. The answer of the Pundits certainly did not determine that, where no partition has occurred, one parcener may elect to sue a trespasser for his own share. Mr. Justice Hyde's note is meagre, and leaves in uncertainty what was decided by the judgment. Two other cases relating to the same family property, and which are thought of sufficient interest to publish, further explain the facts: Note III.

(*d*) The rules of Court passed in consequence of the several changes made by this Act bear date 21st July 1782, viz. old plea rules XC et seq. The sections introducing Hindu law are given supra p. 233.—Note I.

RAJE GEER GOSHAINE THE HEIR AND REPRESENTATIVE OF GOSHAINE SOOKDEB GREER DEC. *v.* PUNCHANUND AGHURWOLLAH. (1782)

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Pleading. Where plaintiff sues as heir, the plaint must show how heir.

THE plaint described the plaintiff as above. It appeared that he claimed to be heir by adoption.

THE COURT (*a*) ruled, that where a plaintiff claims as heir by the law or custom of Hindus, he must state in the plaint how he is heir, that is, the relation in which he stands by which he becomes heir and representative of the deceased and thereby entitled to the real or personal right sued for; in order that the defendant may be prepared to disprove the title as laid. By leave,

Hyde's notes. Nov. 20, 1782.

Record withdrawn (*b*).

JAMMOUNAH RAUR *v.* MUDDEN DAY AND GOUR HURRY DAY. (1785)

Father's debts. A son taking land by descent from his father must pay his father's debts.

ASSUMPSIT upon a promissory note made by Suntoos Sircar, the father of defendants.

It was proved, that the defendants had inherited and possessed themselves of the land which had belonged to their father,—and that they were bound, by the Hindu law, to pay their father's debts (*c*).

Hyde's notes. Jan. 20,1785.

(*a*) Impey C. J., Chambers and Hyde Js.

(*b*) The renewed action must be referred to in the answer of this plaintiff, infra *Seeblaul Cossinaut* v. *Punchanund Agrawallah.*

(*c*) The plaint contained an averment "who by the laws and customs of Gentoos are liable to pay and satisfy the debts of the said Suntoos Sircar." The part of the deposition of the witness (Monohur Sircar) taken as proof of the law was as follows: "I demanded the amount of the paper from the defendants; they said, they had no money to pay; they did not object to the paper, but said they had no money. Defendant's father left lands and other effects: defendants said, our father left no ready money, but some lands and effects. After the death of the father, the defendants his sons are certainly bound to pay his debts, now become their debts, and they are bound to pay them by the Hindu law."

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THE COURT (*a*) considered this sufficient. Mr. Justice Hyde's note is: "—This being so common, plain, and reasonable Hindoo law, I (John Hyde) suffered to be proved (*b*) by a common Bengally witness, and would not put a question to the Pundits because of the delay attendant on all those references".

Judgment for plaintiff.

Mortgage.

A native instrument of mortgage, without possession, held to confer jus in re, not merely jus ad rem; contrary to opinion of Court Pundit.

A judgment creditor of the mortgagor having, under a fi. fa. issued subsequently to the mortgage, seized and sold the mortgaged premises, which the sheriff (under an indemnity) delivered to the purchaser, the creditor and the sheriff both having notice of the mortgage—these two defendants decreed to pay the mortgage money, with interest, and costs of all parties.

S. C. Records and Chambers' notes. April 5, and August 15, 1785.

SEEBLAUL COSSINAUT, SEEBPERSAUD, GREEDUR DOSS AND OMICHUND AGRAWALLAH *v.* PUNCHANUND AGRAWALLAH, RAJE GHEER GOSAIN, JEREMIAH CHURCH, AND AMMEEN NULLAH. (1785)

THE bill (filed 1st October 1783) states,—that on the 11th February 1783, the defendant Punchanund Agrawallah, being indebted to the complainants, mortgaged his estate of inheritance to them by an instrument in the Bengal language, a translation of which is set out (*c*)—that Sa. Rs. 1,083 with the interest remains due: and the bill charges,—that, after the execution of the mortgage the defendants combined to prevent the plaintiffs getting possession of the mortgaged premises, that judgment was obtained against the mortgagor by the defendant Raje Gheer Gosain and execution issued, under which the mortgaged premises were seized by the sheriff (the defendant Church), to whom notice of the mortgage was given but who nevertheless sold the premises to the defendant Ammeen Nullah, and put him into possession, —that this purchaser refuses to recognize the mortgage.

(*a*) Chambers and Hyde Js.

(*b*) sic in orig.

(*c*) The mortgage was not in Bengali, but in the Urdu or Hindostany language and Devanagri character.

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The prayer is; "that the said Raje Gheer Gosain Punchanund Agrawallah and Jeremiah Church or such one of them as the Court shall think proper may be compelled to pay and satisfy to your orators the said sum of Sa. Rs. 1,083 together with all interest due and owing on the same by a short day to be appointed by this Hon. Court together with your orators' costs and in default thereof that the said defendants and all persons claiming under them and each of them may be foreclosed of and from all equity of redemption or claim in and to the said mortgaged premises and every part and parcel thereof and may deliver over to your orators all deeds evidences pottahs and writings relating to or concerning the said mortgaged premises or any such part thereof as to your lordships shall appear proper and sufficient and that the said premises may be sold and your orators be paid all principal and interest so owing to them as aforesaid out of the produce of such sale or that the said defendants may be compelled to pay and make good to your orators such principal and interest so owing to your orators as aforesaid or that any such account as your lordships shall think proper may be had and taken between your orators and the said defendants or any or either of them as to your lordships shall appear proper and that your orators be paid any such balance or sum of money and with any such interest as shall appear due and owing upon such account or otherwise as shall in your lordships' judgment be just and equitable—"

The answer of Punchanund Agrawallah admits the mortgage, that the whole debt remains due—that Raje Gheer Gosain has for a "pretended" debt sued and arrested this defendant, who is still in custody, and at the trial of his action "by means of corrupt and false evidence which he caused to be given in support of his pretended case" obtained judgment. The same answer then states the

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seizure and sale of the mortgaged premises by the sheriff under a fi-fa in satisfaction of the judgment.

The other defendants each substantially admit his own acts as stated by the bill: Ameen Nullah denies all knowledge of the mortgage, and relies upon it not being registered "in the proper office for that purpose": Raje Gheer Gosain states his judgment to have been recovered in February 1784, upon an action commenced 9th January 1783, for money lent by his adoptive father Soocdeb Gheer Gosain, and that the mortgaged premises were sold by the sheriff for Sa. Rs. 1350 which, after deducting poundage &c., was paid to this defendant.

The cause was heard, upon evidence, on the 4th and 5th April.

Church, for the defendants, urged (inter alia) the mortgage not being registered. This objection was overruled: the Court held, that the ordinance or bye law referred to merely gave priority to a registered deed, and could not apply in this case, because the bargain and sale by the sheriff was not registered. With respect to the character and effect of the instrument of mortgage, the Court desired to consult the Pundits: the hearing was therefore adjourned.

On the 15th August, Sir Robert Chambers has the following note:

"This cause is now called on by special adjournment from the 5th April last, on which day the cause having been gone through and fully heard, the Court was about to pronounce a decree for the complainants, when a doubt was stated by one of the judges, whether or no the instrument relied on by the complainants as a mortgage was really such by the Hindu law, or in other words, whether it conveyed jus in re or only jus ad rem. The words of the instrument, according to their obvious and natural construction, seem to import a mortgage, and to convey jus in re, from the time of its execution:

and there is no doubt, that it is executed in such a manner as is sufficient to convey real property by the Hindu law. Nevertheless, as the above mentioned doubt had arisen, we thought it would be proper to endeavour to inform ourselves, whether, by the Hindu law, the effect of this instrument would be such as we had conceived; and accordingly, as we have at present only one Pundit, named Ramchern, the following case was laid before him: *Hindu Law*

Case. A is severally indebted to B, C and D, and is likewise severally indebted to E; and, in order to secure the debt of B, C and D, executes to them a paper writing to the purport and effect following:—

"I Punchanund Agrawallah do write that I stand indebted to the shop of Seeblaul Cossinaut the sum of Sa. Rs. 318, to the shop of Seopersaud Gridhur Doss Sa. Rs. 150, and to the shop of Omichund Agrawallah the sum of Sa. Rs. 615, altogether amounting to Sa. Rs. 1,083, being my just debts to the said three persons, which money I being unable to discharge now, I have therefore for the sure payment of this debt mortgaged to the said three persons a house of mine situated in the bazar Calcutta opposite to the house of Callagur containing four cottahs of ground together with all appurtenances thereunto belonging. The limited time for payment is six months, and the interest is to be paid at the rate of twelve annas per cent per month, (so) that at the expiration of the said limited time the whole, principal and interest, I will pay ye, and clear the house. Should I not pay the same according to the said limited time, then and in such case, I will sell the said house and pay the money, should I not do so, then ye may complain against me at the Court, sell the said house, and receive your money. Upon these conditions I have written and given this instrument of mortgage. Dated Sumbut year

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1839 the 10th day of the moon of the month of Maug answering to the 2d day of Falgoon 1189 B. S."

(three witnesses, and signed) PUNCHANUND AGRAWALLAH.

Queries 1. Does this paper writing make the house and land mentioned in it liable to the debt of B, C and D, in preference to the debt of E? Or,

2. If E, before the debt of B, C and D is paid, and before the expiration of the six months therein mentioned, sues for his debt,—ought the judge to sell the house and land in question, and pay the debt of E therefrom, without first paying the debt of B, C and D?

Answers 1. According to this paper writing, the house and land is not liable to the debt of B, C and D, in preference to the debt of E.

2. According to this paper writing, the judge ought to sell the house and land, and pay the debt of E, without first paying the debt of B, C and D.

Such were the answers given by Ramchern, which were not however satisfactory to any of the judges, and were the less so, when we found, that he could not support them by any authorities brought from the books of Hindu law, nor by any clear and apposite reasons.

The judges therefore agreed to keep secret, as far as in them lay, the answers of Ramchern, until further information could be got; without intimating to any one, in the meantime, their own inclination to a contrary opinion.

Verbal opinions were obtained from other pundits, none of which were found to agree with the answers of Ramchern: and Persian translations of the case and questions that had been put to Ramchern were, together with a copy of the instrument (which is in Hindoostany) (*a*) laid before Goverdhun Cowl, a Cashmerian

(*a*) The original Nagri, with the Persian translation, are given infra, Note IV.

pundit, who was then in my service, but who was afterwards chosen to fill the place of a Pundit to the Court, at that time vacant by the death of (*a*) *Hindu Law*

His answers were directly contrary to those of Ramchern, were fortified by references to the *Smirity* of Munnu, a work of the highest authority among the Hindus, and were so satisfactory to all the judges, who had several conferences on this subject, that the following decretal order was now made :—"

The note then sets out the decree, which orders (without more)

> The defendants Church and Raje Gheer Ghosain forthwith to pay to the complainants the principal sum of Sicca Rs. 1,083, with interest from the 11th February 1783 (the date of the mortgage) at nine per cent, making Sa. Rs. 1,328, and all costs of suit including those of the other two defendants.

DOE DEM. TILLUCKCHUND DOSS AND RASBEHARRY DOSS *v.* RAMHURRY DOSS AND CHOWDRANNY. (1785)

Parceners. Widow's right.

ANCESTRAL property descended from Pershoram Doss to his two sons, Rutton Eshur Sircar and Soberam

A family manager dies, without issue: his widow gives up an adequate part of the estate to one of the cosharers, G, in consideration of an absolute relinquishment by him and his sons of all further claim, and they henceforth exclusively enjoy the portion surrendered to them. The widow continues in possession of the remaining portion, to which, upon her death, those of the family not claiming under G succeed. G's sons bring ejectment for their share: nonsuited. *Chambers notes*, April 11, 1785. *Hyde's notes*, April 15, 1785. *and S. C. Records.*

(*a*) blank in the original.

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Sircar, who were an undivided family. Rutton Eshur Sircar survived his brother; and on his death, without issue, the entire estate came to the possession of his widow, Permessary Dossee, who obtained letters of administration to her husband's estate.

The present action was between two grandsons of Soberam (through his son Gopeychurn), and a great grandson of Soberam, (through Bindabund and Kissenchurn, grandson and son of Soberam); Chowdranny was the other defendant's mother. A dispute about the estate between the widow and administratrix of Rutton Eshur Sircar and her nephew Gopeychurn had been, through the Mayor's Court, referred to four arbitrators. Their award was not unanimous, and therefore not submitted to. (*a*) Afterwards, a decree of a local tribunal called the Court of Cutcherry was obtained: this was appealed. The decision then appears to have been in favour of appellant, disallowing the claim to take any part of the estate out of the hands of Permessary: but no formal judgment or decree passed, as the family dispute was in the mean time arranged. An instrument of release had been, at what precise date does not appear, executed, for a consideration, to Permessary, by Gopeychurn and the lessors of the plaintiff. The transaction was deposed to at the trial, the loss of the release being proved (*b*), as follows:—

There was a dispute between Permessary and Gopeechurn which was brought to a conclusion. Gopeechurn and his sons Tilluckchund and Rasbeharry received from Permessary Co.'s Rs. 36,001 (*c*) and a

(*a*) Cossinaut Baboo, an arbitrator, thus deposed;—"As we three signed the award, and the fourth did not, I think the fourth must have been of a different opinion: I do not remember in what respect Sobaram Bysack [the dissenting arbitrator] differed in opinion."

(*b*) A copy appears to have been read, from a book of public registry.

(*c*) Proved, by the same witness, to have been paid in securities (afterwards realised) and in cash.

place called Gual Battee and a shop in the great bazar, and they accordingly executed a release; it was executed in my presence—it was mentioned in the release by Gopee and the lessors of the plaintiff, that they had complained to the Court of Cutcherry (*a*) for the estate of Rutton Eshur Sircar, which complaint was referred to arbitration, and that by the decision of the arbitrators they were not entitled to any thing, and that they therefore submitted themselves to Permessary's generosity and that she out of her own good-will allowed them Rs. 36,001 and a place called Goul Battee for their habitation, and also a shop in the great bazar; whatever might be the remainder of Rutton Sircar's estate neither they nor their children should lay any claim to it, and that the remainder should be hers, and that whatever she (Permessary) had given to them, that Bindabun shall not lay claim to, and whatever she should give to Bindabun, that they would not lay claim to.—Gopee and his two sons have continued ever since in the quiet possession of the Goul Battee and shop.—Gopee and his two sons took an oath by placing their hands on Permessary's feet, saying that they would never lay any further claim on the estate. Bindabun was present at the execution of the release. It was executed at the mutual desire of all the parties. Permessary did not first desire them to execute it: Permessary was never desirous to allow them any thing. Gopeechurn and, I think, his two sons joined with him and complained in the Mayor's Court, and the matter was referred to the arbitration of Cossinaut, Sobaram Bysack, Radachurn Addie and Budinaut Day, and they for a long time could not agree, but Cossinaut was of opinion that Premessary should give 50,000 Rs. to them, Sobaram Bysack on hearing this came and told Permessary that he was of opinion that Gopee was not entitled to any part of the estate as he had turned *bustom*, but the friends of Permessary persuaded her to allow something to him and make an end of the dispute and it was agreed by them (Permessary's friends) that she should allow Gopee and his two sons 36,000 Rs. and the houses that I have already mentioned. Gopee and his two sons did not keep their word with Permessary, for after they executed the release they made a complaint in the Court of Cutcherry: the gentlemen of the Court of Cutcherry did not attend to the release, and the matter was left to arbitrators, and there was a decree made in that Court against Permessary. Bindabun and Permessary appealed from the decree; and then it was given in favor of Permessary when Mr. Floyer was president of the Court of Appeals (*b*)—

(*a*) This is evidently a mistake for the Mayor's Court.

(*b*) Extracts from the evidence of Jaggutram Paul, witness for defts.

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Other witnesses prove that, pending the appeal, the dispute was amicably settled, that subsequently, about 1774 A. X. and after the death of Bindabund, these lessors reasserted their claims to a further share of the estate. (*a*)

The release does not appear to have been insisted upon, if produced, before the Cutcherry Court; but the views taken in the award were warmly supported and opposed by pundits. The arbitrator Cossinaut deposes:—

> Rajah Nobokissen delivered an opinion of the pundits contrary to what my pundits gave, and therefore all the rich people of this town were called to the Cutcherry. All the rich people attended the Cutcherry the bramins all attended, as there was a difference of opinion among the pundits: the rich people attended, because the gentlemen wanted the pundits to swear to their opinions, and we went to represent to the gentlemen that it was not usual for the pundits to swear to their opinions.

The Court compelled a submission of the matter to pundits of their own selection (*b*), and upon their opinion decreed. An English gentleman deposes, that "the great black men" of the settlement espoused the part of Bindabund (i. e. of the widow) in the dispute. (*c*)

The rejected award made by Cossinaut and his

(*a*) Tilluckchund became administrator de bonis non of Rutton Eshur Sircar and in that character brought ejectment against Chowdranny in 1780; she pleaded in July of that year, and obtained judgment as of nonsuit for non-trial in July 1783. Tilluckchund's title as administrator is not noticed in the proceedings or notes of the case in the text.

(*b*) Bindabund and the vakeel of Permessary were both imprisoned until they consented! The judges of that Court then (1768) were, Messrs. Hewitt (President), Holme, Fenwick, Bathoe, Cottrell, Charters, Keating, Palmer, Maxwell.

(*c*) Permessary's vakeel thus describes the question at issue:—Permessary said, that Tilluckchund and Gopeyhad no right to any part of the estate—and Gopey and the others said, that they had a right to part of the estate.

co-arbitrators was put in evidence upon the trial of this ejectment, and was (translated) as follows: it was addressed to the Mayor's Court:—

This award is given for the following purposes. Goopichurn Doss hath made a complaint against Permossery Dassee widow of Ruttonessore Sircar for family fortune. Thereupon, you, the gentlemen of the said Court, ordered us to examine the said matter, and in consequence of the said order we have examined the same according to the best of our judgment and skill, and declare, That Ruttonessore Sircar has no issue at all, but Sobaram Sircar has sons and grandsons: we have likewise examined the books and papers, therein it appears that the whole of the family fortune is inserted in the said books in the name of Sobaram Sircar, the father of Goopichurn Doss; therefore Goopichurn Doss is principal, and he has a right to manage the business in the same manner as Ruttonessore Sircar did in his lifetime: the widow of Ruttonessore Sircar is to have the care and management of the family in the house, with respect to the necessaries of life, and she is to perform the charitable duties in the same manner as she used to do in the lifetime of the said Ruttonessore Sircar, but whenever she is inclined to distribute more charities, she must communicate it to Goopichurn Doss, who is to supply her with so much expenses as to answer the purposes: after the death of Ruttonessore Sircar's widow, if the heirs of Goopichurn Doss chose to live together undivided, very well, if not, they shall receive shares: the sons and grandsons of Sobaram Sircar are to act under the command and direction of Goopichurn Doss, in the same manner as they did under the command and direction of the said Ruttonessore Sircar in his lifetime. This being our sentiments. Finis. Dated 25th Assin 1173.

When going on pilgrimage, Permessary had executed an instrument of gift or delegation to her grand nephew Bindabun, viz.—

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DOE DEM. TILLUCKCHUND DOSS *v.* RAMHURRY DOSS

Sree Sree Bisno

SREE MOTTY PERMESSORY DOSSY. X

To Sreejoot Bindabun Doss, blessed be you.

I do write this to the purport as follows; that my deceased husband Rotnessor Doss's house and compound ground &c. money and estate whatever he died possessed of which I have given to Sree Gopeechurn Doss Sree Teluckchund Doss and Sree Rausbeharry Doss Co.'s Rs. 36,001 also a goal batty for their habitation and a shop in Great Bazar, exclusive of which whatever the residue I possess I do hereby disown and freely make over to you, you are the master of my deceased husband's debts dues and demands, which you are to receive and pay and you are to supply me with all the necessaries of life as also to perform all the rites and ceremonies due to my funeral as far as possible also you are to take notice in the like manner of my *shopotnee* (*a*) who is insane and at her decease you are to perform all the usual obsequies as your circumstances will afford you are also to observe the devotions of my deceased husband in the manner he used to do that is to worship the deities both of this place and that of holy Bindabun and other usual ceremonies to be done according to your abilities that nothing should be deficient to secure the way of salvation, which you will strictly and carefully observe. I have by virtue of this writing given over all my fortune to you should any person hereafter in my behalf make a demand upon you or I myself do the same it is void by virtue of this release. Dated this 22d day of Cartick in the year 1177.

(Witnesses)

Permessary returned, and died in Calcutta(*b*): Chowdranny, on Bindabun's death, came into possession. The

(*a*) *Shopotnee*, the other wife of the deceased. *Translator's note.*

(*b*) An old sircar of the family deposes.—" Had the houses and land which came to Permessary been sold at her death, they would

claim now made was for one half of the family estate, (*a*) in defendants' possession, which was situate in Calcutta.

There was some evidence, that the release given by the lessors was under the pressure of want, and not with the intention of giving up their claim as sharers,—also, that Permessary had acquiesced in and agreed to abide by the decision of the Court of Cutcherry against her.

Much stress was laid, on behalf of the lessors of the plaintiff, upon Tilluckchund having performed the funeral ceremonies or *sraddha*, of Permessary,—and, for the defendants, upon the alleged fact that the father of the lessors had become a *väyshnava* (*b*) or religious mendicant. The evidence upon the first point was complete, as to the fact, but finally held to be immaterial in proof of title: upon the second point, the evidence was inconclusive.

On the 15th April, after the reply of the lessors' advocate, the trial was adjourned for the advocates to agree on a state of facts and questions for the opinion of the Pundits. There is no record of the case submitted nor of the answers; but on the 4th July, is the following laconic note by Mr. Justice Hyde:—"Performing the *cheraud* no effect. Nonsuit." (*c*)

Nonsuit.

be worth from one and an half to two lacks Rs."—which account of the value of the family estate is confirmed.

(*a*) The plaint is, "entered into a moiety of one messuage &c." stating the demise of "the moiety of the said messuage &c."; and the defence is taken for the moiety. Undivided, or any such term, is not used.

(*b*) The last *a* in this word is soft and scarcely pronounced. It signifies strictly, a disciple or devoted worshipper of Vishnu. Putting the letter *t* in place of *n* is a corruption: the word is written in the depositions *bustom*.

(*c*) Note V.

Hindu Law

DOE DEM. MUNOOLOLL BABOO *v.* GOPEE DUTT, BOBANNY TAGOOR, HURRY TAGOOR AND DATTERAM SHAW. (1786)

Will: (*a*) *Evidence.*

G a Khettrey, having divided the patrimony with his brother, bequeathed the whole of his divided share to a Sooder, whom G had brought up from childhood and treated as a son. G's surviving relatives were, a widowed daughter and his brother's son: the daughter was living with her husband's family. The factum of the Will was proved by one of three attesting witnesses, who was a legatee and who also proved the attestation by the other two; and others spoke to the testator's handwriting.

Held: the Will is proved and valid.

S. C. Records; *and Hyde's notes*, August 16, 1786.

THIS was for land in Calcutta. The plaint was filed and issue joined in June 1785: the trial came on in the first term of 1786, and was several times adjourned: when the evidence was closed, on 22nd March, the Court made this order:

IT IS ORDERED that the following case and questions be submitted to the Pundits of this Court, to wit:

Case. Kaivul Kissen and Gunga Bissen were brothers of an undivided family of the Kettree cast(*b*). Kaivul Kissen died, and left one son, Jeikrissno. Some years after the death of Kaivul Kissen a separation and division took place between Gunga Bissen and Jeikrissno, when Gunga Bissen took nine annas and Jeikrissno seven annas of the family estate, which they enjoyed separately till the death of Gunga Bissen several years after.

After the division of the estate, and about three years before his death, Gunga Bissen made his Will, as is alleged by Munnoo Loll Baboo; which Will is subscribed with the names of three witnesses, one of whom appears before the magistrate, and testifies, that the testator signed the paper and declared it to be his last Will in the presence of himself and the other two subscribing witnesses, all of whom (as he asserts) signed their names as witnesses at the desire of the testator. The other two subscribing witnesses do not appear before the magistrate; but other witnesses, beside him who testified that they saw the Will executed, swear that they know the testator's handwriting and that the signature is his. It appears

(*a*) Note VI.

(*b*) Usually spelt *caste* in modern writings, and sometimes mistaken for an Indian word, as observed by Mr. Elphinstone (Hist India, ch. 1), but it is an English derivative from the Spanish or Portuguese *casta* a breed, race, and so described by Johnson.

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by the Will, that legacies are bequeathed to two of the subscribing witnesses, one of whom is the man that now gives evidence.

At the time of Gunga Bissen's death, his nephew Jeikrissno was living, and so was a daughter of Gunga Bissen who was then and still is a widow. It appears, that she was living with the relations of her deceased husband, and not with her father at the time of his death; but it does not appear whether she had or had not any issue. By the Will (which is hereunto annexed) the testator leaves nothing to his nephew Jeikrissno, and only a small legacy to his daughter; but, after bequeathing other legacies, he gives the bulk of his fortune to one Munnoo Loll Baboo, whom he constitutes his heir and master of his estate. It was pretended, that this Munnoo Loll Baboo had, when a child, been bought as a slave: of such purchase, or of his being a slave, there was however no proof; but it was proved, that he was of a cast inferiour to that of the testator, viz. of the Sooder cast. On the other hand, it was proved, that Gunga Bissen had bred him up as a child of the family, and treated him as tenderly as if he had been his own son; though it did not appear that he had ever been regularly adopted by him.

(translation of the Will, as annexed to the case)

Sree Sree Radakissno Jee

under whose feet are all my hopes.

SREE GUNGAH BISSNO MEHUNDROO *inhabitant of Borrobuzar in Calcutta.* I do approve of what is written in the Bengal language.

To Sree Monoolal Baboo

I Sree Gungah Bissno Mehundroo do write this paper of bequeathment to the purport as follows,

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DOE DEM. MUNOOLOLL BABOO *v.* GOPEE DUTT.

I have neither heirs nor any body else, I have brought you up and adopted you as my son, after my death you are to be sole manager of all my property, I have intrusted you with every thing, and you are to act in every respect in such a manner as to preserve my name, I have given you nine annas part of my dwelling house containing seven cottahs thirteen chuttacks and an half of ground as per pottah together with the brick buildings and all other appurtenances thereunto belonging and two brick shops situate at Borrobuzar, for your habitation and enjoyment, that you, your sons, grandsons, and their heirs may happily inhabit and enjoy the same, nobody shall make any claim whatsoever on the same, should any person in future lay any claim to them the same is to be deemed false.

Item. The nine annas part of the garden situate at Mutchoa Bazar which formerly belonged to Debidoss Bhellah, after giving away what belongs to Sree Punchanund, the remaining part thereof is two biggahs six cottahs and five chuttacks of ground including the tank and all other appurtenances thereunto belonging, whatever part of the said ground and to whatever persons I do hereby bequeath, you are to give the same to each of them agreeable to the list, and the remaining part thereof together with the ground by the river side (excepting the house of the Sib the deity*(a)*, and the gaut) consisting of five cottahs and three quarters of ground and the pucka buttress, you are to sell, and out of the amount produce, whatsoever it may be, you are to pay such sums as I do herein and hereby bequeath towards the performance of divine services for the future happiness of my soul, which altogether amounts to Rs. 3,100 agreeable to the undermentioned list, and out of the remainder you will give a maund of provision to every house of worship existing in Calcutta, by way of offerings, after having done so, whatever may remain out of which you are to distribute five or ten rupees to every head gossamy, and the remainder whatever it may be, you are to distribute among the bramins bustoms and the poor for their sustenance.

The gossamy of Sree Sree Radabullab the deity, who is to live in the worship house here, shall have the direction and power of the distribution of the abovementioned religious legacies and gifts, you are to perform the same conformable to his advice, as he is my *isticool* (*b*); in short you will do all that is for the good of my soul in the futnre state.

(*a*) This refers to the god *Sheeva* or *Sheeba* (soft *a*).

(*b*) a priest that instructs a family in tenets of religion, and utters to their ears some mysterious words. *Translator's note.*

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Item. I give and bequeath the village Takooriah situated within the district of Cossijoorah (as per sunnad) to Sree Sree Jagurnaut the deity for his use.

Item. I have a land at the village Bagwall measuring two hundred biggahs which you are to distribute to all the legatees, agreeable to the list.

I have also four begahs of ground situate in two villages called Chillicka and Magoory, the same is also to be given to the respective legatees agreeable to the list.

I have two houses at Ansetpore, the large one you will take to yourself, and the small one you will give to my two slave girls, who are to be constant in their duty and you will also give to each of them her own jewels.

Item. The rajah of Burdwan owes me Rs. 5,500 on account of his bond, should the said money be luckily recovered with interest, out of which you are to pay Rs. 1,000 to Sree Mottee Sham Bibby, and Rs. 500 to yourself, and the remainder you are to expend towards the divine services.

The whole of my gold and silver ornaments together with the household furniture &c. are to the amount of Rs. 500 or Rs. 700, Rs. 400 thereof you are to expend towards my funeral, and the remainder is yours.

After my death you are to procure a bramin's or a ketry's child to set fire to my funeral pile and burn my body, for which service you will pay him Rs. 100.

Should you make any difference in the performance of the divine services and charitable offices, you shall be punished by your conscience. For these purposes I have written and given this writing of bequeathment and power. Finis. Dated 1st Bysack 1186.

Witnesses &c. [Then follows a particular recapitulation, in the form of a list, of the whole of the bequests.]

Questions 1. Could Gunga Bissen by this Will disinherit his nephew Jeikrissno in favour of a person of an inferiour cast?

2. Supposing that he could by this Will disinherit his nephew, could he also disinherit his daughter the above mentioned widow?

3. If the Pundits should answer, that Gunga Bissen might legally disinherit his nephew, but that he could not disinherit his daughter, they are in such case desired

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DOE DEM. MUNOOLOLL BABOO *v.* GOPEE DUTT.

to say, whether the annexed Will may yet stand good so far as to give to Munnoololl Baboo and the other legatees all which the daughter is not entitled to have; or whether its defectiveness with regard to the daughter will make it totally void and thereby let in the claim of the nephew to any and what share of the estate.

4. If Gunga Bissen had a right, by the Hindu law, to make such a Will; is it sufficiently proved, by the oath of the subscribing witness who had a legacy bequeathed to him, and by the testimony of other witnesses who are not legatees but can only speak from their knowledge of the testator's hand writing?

Witness Sir Elijah Impey, kt. &c.

The further proceedings and the result are best explained by Mr. Justice Hyde's note of the 16th August, which is verbatim as follows:—

"This ejectment had been tried long ago, and the judgment had been delayed on account of the opinions of Pundits; Ramcherrun, who has long been one of the Pundits of this Court, differing from Goverdun Cowl, who has been lately appointed one of the Pundits of the Court, having long been a Pundit attendant on Sir Robert Chambers. On these two Pundits of the Court differing in opinion, (*a*) the Court desired Mr. William Chambers, interpreter of the Court, to take opinions of other Pundits; and Mr. Chambers did so, before Sir Wm. Jones returned to town: and after Sir Wm. Jones returned, the Court desired him, who has applied to the study of the Shanscrit language and has already acquired a great degree of knowledge in that language and has read (*b*) several books of Hindoo law in that language, therefore the Court desired Sir Wm. Jones to put questions

(*a*) Note VII.

(*b*) Invariably written by the learned judge "re'd."

vivâ voce to other Pundits, and to inquire from Ramcherrun the meaning of some apparent contradictions in the opinion given by Ramcherrun: and Sir Wm. Jones has discoursed with him and with other Pundits and has looked into the Shanscrit books on the subject, in the parts referred to by the Pundits, and now in Court read his own translation of a passage from one of the Hindoo writers who is esteemed as a saint or demi-god, and which book all the Pundits acknowledge is of the highest authority. *Hindu Law*

The principal question in the cause was, whether a Hindoo, by cast a Kettrey, who had divided the land descended from his father between himself and his brother could, by Will, give to a man of lower cast, being a Sooder, his own part of the divided land, in prejudice to his daughter, being a childless widow, and in prejudice to the son of his brother who had the other part of the divided property (*a*).

THE COURT (*b*) were of opinion, according to what seemed to them to be the better opinion of the Pundits, that the Will was valid; and accordingly judgment was given for the plaintiff" (*c*).

Judgment for lessor of plaintiff.

(*a*) This, it will have been observed, is a naked and insufficient statement of the question.

(*b*) Hyde and Jones Js. only were present on the day judgment was given, but it appears to have been the judgment of the whole Court.

(*c*) Sir Robert Chambers has a note of the reply of the counsel for the lessor of plaintiff, from which it is apparent, that in those days testamentary disposition by Hindus could have been no novelty, if questionable. The note is: "Mr. Davies in reply,—Now, evidence on the part of defendants in opposition to a Will proved by the testimony of three witnesses, and corroborated by many circumstances. Mr. Gordon on the part of defendants has stated three stumbling blocks to our title; 1, plaintiff a slave, and therefore incapable of taking. It is the first time I have heard of such incapacity, and it remains to be proved. 2, that Jeykrishen

Hindu Law

NOCOOR BYSACK *v.* GOPALL CHUND SEAT. (1788)

Infancy.
By the laws and customs of Hindus, one aged sixteen is of full age to bind himself by bond.

Chambers' notes, Nov. 21, 1788; *and S. C. Records.*

DEBT on bond. The third plea was, "—that he the said Gopall Chund Seat at the time of his sealing and as his act delivering the said writing obligatory in the plaint abovementioned was under the age of twenty one years to wit of the age of sixteen years and this &c" (*a*) Replication: after protesting, that the defendant was at the time of executing the bond of the age of twenty one, precludi non—"because he saith that he the said Gopall Chund Seat is a Hindoo native of Bengal and at the time of his sealing and as his act and deed delivering the said writing obligatory in the said plaint mentioned was of full age to bind himself in the obligation aforesaid according to the laws and customs of the Hindoos and this &c." Issue joined. It was proved, that the defendant, at the time of making the bond, was of the age of eighteen or nineteen years.

Davies for plaintiff.

Martyn for defendant.

Judgment for plaintiff. (*b*)

was the indefeasible heir of the estate. We have proved, in opposition to this pretence, an actual division of the estate between deceased and Jeykrishen, of whom one took seven anas and the other nine anas. 3, difference of cast. This is a question of Hindoo law; and it is at present gratis dictum, that a man cannot, by the Hindoo law, devise his estate to a man of a different cast. If any such law exists, it is incumbent on defendants to show it." If the question was considered an open one by the Court in this case, their decision must have been come to upon the information obtained (and communicated vivâ voce in open Court) by Sir Wm. Jones: the written opinions extant, viz. of the two Court Pundits and of two others (Note VII), do not sufficiently account for that decision.

(*a*) The plaint contained no statement that the parties were Hindus, or what they were.

(*b*) There is no note of any observation of the Court, nor of any argument.

KISTNOCHURN MULLICK *v.* RAMNARAIN MULLICK. (1788)

Hindu Law

Pleading : Partition. Division of patrimony cannot be made in the absence of the mother.

Chambers' notes. Nov. 27, 1788.

SUIT by a younger brother against the elder and manager of the family estate, praying an account and division, and charging exclusion (*a*). The father, besides these sons, left a widow and four daughters, all living. Sir Robert Chambers' note, after stating the substance of the pleadings, proceeds,

"It had been intimated before, that this cause must probably go off for want of parties, the mother not having been made a defendant, and now Mr. Justice Jones, after quoting Mr. Halhed's compilation ch. 2, s. 12, read his own translation of the original text from which the first words in that section of Mr. Halhed's book are taken. Sir W. Jones' version of them runs thus:

After the civil or religious death of the father, although the sons have an absolute right to his property, yet, while their mother lives, it is illegal for them to divide that property. Sir William observed, that the word which he has rendered by *illegal* is—(*b*) which seems to be equivalent to *inofficiosum* in latin, and to import something more than,

(*a*) The prayer is—That the said Ramnarain Mullick may be decreed to come to a just and fair account with your orator for the personal estate of the said Promonondo Mullick and for the rents issues and profits of the said real estate of the said P. M. and of all monies that have accrued from the earnings of your orator and the said defendant and of all profits which have been made by the said R. M. from the personal estate and from the rents and issues of the said real estate which have come to his hands custody possession or power or which have been received by him or any other person or persons for his use and that the said R. M. may pay to your orator what upon such account may appear to be due unto him and that he may assign over one moiety of all such securities which are or have been entered into or given for such part of the said family estate that hath been lent out by the said R. M. or by any other person or persons and that your orator may be let into the possession of the moiety of the said real estate whereof the said P. M. died seized:—and for general relief.

(*b*) Blank in orig.

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not right or decent, which is Mr. Halhed's phrase. It means, inconsistent with civil and religious duty. Sir W. Jones then read his own translation of an extract from the sacred text of MENÛ (so he writes the name): it is in these words:

After the death of both father and mother, let the brothers meet, and equally divide the paternal inheritance: while the parents live, they are not masters of it.

Gloss:—From this text it appears, that the brothers of the whole blood must divide the father's estate after the death of both parents, that they cannot at their own pleasure divide it while the mother is living together undivided; the eldest brother (being of ability to transact business and keep house) shall take the whole, and the other brothers shall live under him as under their father. So is the text of Menu. *The eldest brother shall even take entire possession of the paternal estate: the others shall live under him as under a father.*

The judges seemed to think that it would be proper in this case to consult the Pundits (*a*); but, in the mean time, they were all clearly of opinion, that the mother ought to be made a defendant: and though perhaps, in strictness, the bill ought to have been dismissed for want of parties, yet, the complainant being a pauper, it was ORDERED, with the consent of the defendant's counsel, that

> The complainant be at liberty to amend his bill by adding the name of the mother of the defendant Ramnarain Mullick as party defendant thereto and that the costs of bringing this cause to a hearing do abide the event of the suit."

(*a*) viz. upon the merits. The pleadings and evidence disclose some specialties; but no decree or further proceeding after this hearing has been discovered.

MODUN GOPAUL BOSE *v.* SOSSARAM DOSS, MONICK DOSS, JOHN RICHARDSON, DUCORY BOSE, BIRJOORAM DOSS, AND NILMONEY DOSS. (1788)

Hindu Law

Mortgage.

Bengali mortgage, without possession, by the owners of a moiety, but professing to be of the whole; the loan being taken with the assent of all the adult sharers, and in order to defray the expense of their mother's sraadd—enforced, against those who were parties to the suit, viz. the owners of three-fourths.

Decree: sale on default in six months.

S. C. Records; and Chambers' notes, Nov. 28, 1788.

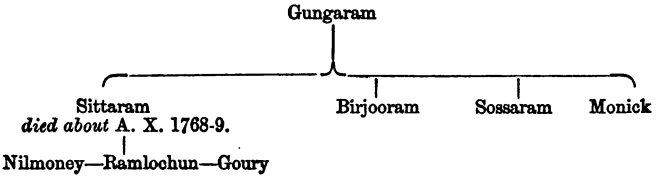
BILL filed 17th June 1778 (amended Feb. 1786), to foreclose a mortgage made by the two first defendants of their own together with their brother's and nephews' shares. (*a*) The answer of Sossaram Doss and Monick Doss states,—that, though they built the house at their own separate expense, and lived in it separately, they had title to one half only of the ground, nor ever pretended they had more, but, that being distressed for money, and thinking their half equal in value to the sum borrowed, they did mortgage the whole without the consent or privity of their cosharers—that the defendant Ducory Bose obtained a judgment against them, and bought in this land, which he had caused to be seized under a sequestration. The answer of Richardson the sheriff states, that he sold the land, under a writ of venditioni exponas, for Rs. 305, and subject to the mortgage, that Ducory Bose, the purchaser, did not complete the sale by paying the Rs. 305, and that he, the sheriff, therefore withdrew from possession. The answer of

(*a*) The prayer is,—that the said Sossaram Doss and Monick Doss or one of them may be decreed to pay and satisfy to your orator the said sum of Sa. Rs. 601 and also interest due and to grow due thereon after the rate aforesaid by a short day to be appointed by this Hble. Court together with your orator's costs and in default thereof that the said confederates may permit your orator to enter upon and peaceably to hold possession of the said mortgaged premisses and that the said S. D. and M. D. and all persons claiming under him may be foreclosed of and from all equity of redemption or claim of in and to the said mortgaged premises and every part thereof and may deliver over to your orator all deeds pottahs charters evidences writings and muniments whatsoever relating to or concerning the said messuage tenement and premises:—gen. rel., and signed *R. Morse.*

Hindu Law

MODUN GOPAUL BOSE v. SOSSARAM DOSS.

Ducory Bose states his debt and action (against the two), the sequestration, seizure and execution, and that the sheriff refused to return the writ, alleging that he had been desired by the complainant not to return it. The answer of Birjooram Doss and Nilmoney Doss shows the pedigree and state of the family, viz:—



—states that the house had descended from Gungaram —and insists, that Sossaram Doss and Monick Doss, being entitled to one half only, could not mortgage the shares of these defendants.

Birjooram had died after putting in his answer, leaving sons, who were not made parties.

The cause was now heard, on evidence.

The following is the translation of the mortgage: (*a*)

(*a*) The original is much mutilated, but so much of it as can be deciphered is as follows:

শ্রীশ্রীকৃষ্ণ।

শ্রী সহশ্ররাম দাস
মালিক বস্য
সাং মুতালুই
মনোকা ১০ তঙ্কা
দরমাহা মকত্তা
করিয়া দিব।

শ্রী মদনগোপাল বসু।—

- - - - খাতক শ্রী সহশ্ররাম দাস ও মালিক সে কস্য - - - -
- - - - - - - - - তোমারদিগের - - - - - - - - -
- - - - - - - - - বাটির দক্ষিণ। - - - - - - - - -
ও বিম হইতে - - - - - - - - - - - - - - - - - -

১০ দশ তঙ্কা দরমাহা মকত্তা করিয়া দিব টাকার ওয়াদা সন১১৮১সাল মাহাভাদ্রে মনোকা সামেত তঙ্কা পরিশোদ করিব করার মাফিক না দিই তবে বাটি বিক্রি টাকা দিব বেশী হয় পাইব কমি হয় নিজ হইতে

Sree Sree Kisno *Hindu Law*

Memorandum. To the benevolent lender Sree Modun Gopaul Bose.

X

SREE SOSSARAM DOSS and MONICK DOSS inhabitants of Sootalooty.
The profit at 10 Rs. per mo. we have agreed to pay on the whole amount.

The borrowers Sree Sossaram Doss and Monick Doss write this instrument of pledge of a house. The contents as follows:—Our dwelling house situated in the village of Sootalooty in the town of Calcutta, on the southward of the house of Sree Cawan Koomar, containing seven cottahs of measured ground, with all the appurtenances thereunto belonging, we have pledged with you, and borrowed of you the sum of Sa. Rs. 601 which we received from Sreejoot Kisnoram Bosejah's (*a*) treasury. The profit of which we agree to pay on the whole amount at Rs. 10 per month: the term for payment of the money is in the month of Budder in the year 1181 when we will repay the money together with the profit. If we do not discharge it according to this agreement, then we shall pay the amount sale of the house, should there be a surplus we are to get it, if deficient we shall make good the same, after selling the house, should we dispute paying the money, you may

দিব বাটি বিক্রি করিয়া টাকা দিতে কাজিয়া করি তমি আমার নামে দরবারে নালিষ কর তাহাতে খরচা পঞ্চতরে যে লাগে তাহা আমি দিব এই করারে নগদ তঙ্কা পাইয়া খত দিলাম ইতি সন১১৮০ সাল।

(*a*) The father of complainant.

Hindu Law

MODUN GOPAUL BOSE *v.* SOSSARAM DOSS.

complain to the Sircar against us, whatever may be the charges and duties of 5 per cent accruing thereon we shall pay it. On this condition we have received ready money and given this note. Finis. In the year 1180, dated the 3rd Chyte.

(Three witnesses)

Davies, for the complainant, admits that Mr. Richardson is entitled to his costs. It appears on the evidence that the money was borrowed for performing the *sraddha* of the mother, to which all her sons and grandsons were bound, and that Birjooram, who was then the eldest son, (Sittaram being dead) desired it (*a*): but, as there can be no decree against Birjooram nor his sons, we would rather relinquish all claim upon his share than be at any further expense. (*b*)

Martyn, for Nilmoney, who defends for his mother and brothers as well as for himself, insists that the eldest son living performs the *sraddha*, at his own separate expense,

(*a*) There is evidence of admissions, that he knew and approved of the mortgage.

(*b*) A bramin witness deposes:—when a Hindoo dies seized of lands and leaving four sons the eldest of whom afterwards dies leaving issue a son who is an infant under the age of ten years, the three surviving brothers cannot in their own right possess themselves of their deceased father's estate. But, with the mutual consent of each other, they have legal power or authority to sell or incumber the said estate for the purpose of raising money to defray the expences of the funeral rites and ceremonies (or saraud) of their deceased mother: but this deponent believes the sale of the estate would not be valid by the Hindoo law if the nephew does not join in the conveyance on account of his infancy, but that the mortgage would be valid; the infant can, after coming of age (the mortgage being still in force and not cancelled) claim his father's share of the said estate, by paying his proportion of his grand mother's saraud; but the eldest surviving brother cannot claim his share of the said estate, after having consented to the sale or incumbrance of the whole and relinquished his part.

and that Birjooram did so, or should have done so: it is remarkable that he did not join in the mortgage. *Hindu Law*

Decreed: (a)

That defendants Sossaram Doss, Monick Doss, and Nilmoney Doss do, within six months from this day, pay to the complainant the sum Sa. Rs. 601 together with interest at the rate of ten per cent. per annum from the 3rd day of Cheyte in the year 1180 B. S. and that on failure thereof their threefourths shares in the premises in the pleadings in this cause mentioned be put up to sale before one of the Masters of this Court for the purpose of raising money to discharge the same, that the surplus, if any, arising from the sale be returned to the said defendants, and that the said defendants do make good any deficiency that may be in the produce of the said premises: that the bill of complaint be dismissed with costs as to the defendant John Richardson, and that an injunction do issue to the defendant Ducory Bose to restrain him from proceeding at Law or in Equity against the complainant for or on account of the premises in question: that the costs of the complainant in this cause be paid by the defendants Sossaram Doss Monick Doss and Nilmoney Doss.

(a) There is no note of the judgment. The defence was in formâ pauperis, which must have been the ground or excuse for permitting Nilmoney to represent the interests of his absent brothers.

Hindu Law

RUSSICK LALL DUTT AND HURLLOLL DUTT, EXECUTORS OF MUDUN MOHUN DUTT, A HINDOO DECEASED *v.* CHOITON CHURN DUTT. (1789)

Will.(a) D has four sons: the eldest is separated from his father, the others continue joint: the second son is deaf, so as to be disqualified for gaining his livelihood independantly. D, in his life-time, assists and makes separate gifts to each of his sons, but especially favors and provides for the deaf son.

D by his will leaves all his remaining property, which is self-acquired, between the third and fourth sons, except a legacy to their mother.

Held, the will is valid and effectual. (*b*)

S. C. Records; and Hyde's notes, June 19, 1789.

TROVER for books, papers and securities for money. The action was tried on the 11th and 13th April; the plaintiffs claimed as executors: the will (translated) was as follows;

"To Sree Joot Russick Lall and Her Lall Dutt.

I Sree Mudun Mohun Dutt write Sree Joot Russick Lall Dutt and Her Lall Dutt shall have the whole of whatever I am possessed of after me and also be the attornies. Nobody else has any claims; only they shall give Rs. 10,000 to my wife. The end. Dated 1 Joisty 1193." (two witnesses)

The testator left four sons viz. Ramtonoo, Choiton Churn, Russick Lall, and Her Lall.

It was contended, by *Sealy*, for the defendant, inter alia, that the will was void by Hindu law, which does not permit a father to disinherit his son.

(*a*) Note VI.

(*b*) The evidence is all upon record: in support of the will, as a deliberate act, it is complete. The eldest and his family were entirely separate from the father; but his other sons lived with him. The second had been deaf from his infancy, and was therefore considered disqualified to seek his livelihood, as the others did; he was employed by his father, as a book keeper or steward; his father had made him several gifts, and had divided a small paternal estate between this defendant and the third son. There was some evidence of ungrateful conduct in defendant towards his father, and that the latter had withdrawn his confidence; but not sufficient to infer this to have been the motive for exclusion from the will. It was also in evidence that defendant, when his father died, had a larger independent property than either of his brothers, except the separated one.

THE COURT (*a*) stated the following case for the Pundits, and delivered it to Mr. Chambers, the interpreter, in Court: the cause was adjourned until the next term. *Hindu Law*

Case.

Desheret died leaving four sons namely, Rama, Lacshman, Bhareta, and Shutroghun. Desheret had inherited from his father only a small piece of ground, on which he built a house, and of that house and ground he gave one half to Bhareta; and he also in his life-time recommended his eldest son Rama to some employment, who thereupon quitted the family, and now makes no claim on his father's estate (*b*). To the other three sons, who continued to live with him and to do business for him, but who did business also on their own accounts, he gave at different times considerable sums of money, to make what they could of; and at his death, the second son, Lacshman, was worth more than the third or fourth. Since the death of Deshret, a Will, written

(*a*) Chambers and Hyde Js.

(*b*) In July of the previous year, one Heera Sing sued the four sons for money lent to their father, describing them "which said Choitun Churn Dutt &c. have possessed themselves of the estate goods chattles credits and effects of the said Modun Mohun Dutt deceased and are therefore liable by the laws and usages of the Hindus to pay the debts of the said Modun Mohun Dutt." Ramtonoo Dutt pleaded severally, plene administravit, and, — "that he the said Ramtonoo Dutt in the life time of the said Modun Mohun Dutt with the assent of the said Modun Mohun Dutt separated from the same Modun Mohun Dutt and from the family of the said Modun Mohun Dutt and that he by the laws and customs of the Hindoos is not in any manner whatever entitled to any share right or interest of or in the said real or personal estate and effects which were of the said Modun Mohun Dutt at the time of his death and that no part of the real or personal estate of the said Modun Mohun Dutt has come to the hands or possession of the said Ramtonoo Dutt and that he the said Ramtonoo Dutt is not in any manner or shape whatever liable to or answerable for the debts promises or undertakings of the said Modun Mohun Dutt in his life time

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RUSSICK LALL DUTT v. CHOITON CHURN DUTT.

by himself and properly attested, hath been found, by which he gives the whole of his property to his third son Bhareta and his fourth Shutroghun, only requiring them to pay ten thousand rupees to his wife, and also appoints them to be the *attornies*, making no mention of Lacshman, who is deaf. It is therefore asked;

1. Whether, by the Hindu Law, such Will be valid, so as to exclude Lacshman from any share of his father's property?

2. Supposing it not to operate to his exclusion from a share of the property, yet,—whether it be so far valid, as to give to Bhareta and Shutroghun the exclusive management of that property?

Answers of the Pundit Ramcharen.

1. What the father has written is valid, according to the Shaster.

incurred or made and this &c." To which plea the plaintiff replied; precludi non "because by protesting that the said Ramtonoo Dutt in the life time of the said Modun Mohun Dutt with the assent of the said Modun Mohun Dutt did not separate from the same Modun Mohun Dutt and from the family of the said Modun Mohun Dutt as the said Ramtonoo Dutt in his said plea last above pleaded hath alledged and that the said Ramtonoo Dutt by the laws and customs of the Hindoos is entitled to a share right and interest of and in the said real and personal estate and effects which were of the said Modun Mohun Dutt at the time of his death and that he the said Ramtonoo Dutt is liable and answerable for the debts promises and undertakings of the said Modun Mohun Dutt in his life time incurred and made—the said Heera Sing for plea saith that the real and personal estate of the said Modun Mohun Dutt did come to the hands and possession of the said Ramtonoo Dutt in manner and form &c." But afterwards, upon the plaintiff's application, the name of Ramtonoo Dutt was struck out; and the action was discontinued in February 1789. The truth of the same plea was admitted at the trial of two similar actions, in which verdicts were obtained against the three other brothers; *Hyde's notes*, Nov. 20 and 26, 1788.

2. The father not having appointed another son to manage his own acquired property, his appointment of the third and fourth son is valid according to the Shaster. Finis. It will have full force. *Hindu Law*

Answers of the Pundit Goverdhun Kowl Surmono.

1. The father, Dasherat, having excluded his second son, Lacshman, from his father's estate, has given whatever property he had to his third and fourth sons. The paper expressing this is valid, according to the Dharem Shaster. In this same estate, these very two persons are the masters, nor can another son overset this.

2. Although the father had not excluded his son Lacshman from a share in the paternal estate, and had yet, by a writing, appointed Bhareta and Shatroghun to be the managers of it, that writing would be valid, according to the Shaster.

On the 19th June, the cause was called on, and the opinions of the Pundits read; whereupon, the Court (*a*) gave

Judgment for plaintiffs, with costs. (*b*)

(*a*) Chambers, Hyde and Jones Js.

(*b*) On the 26th January of the following year, the will was again proved, in an ejectment by the executors against their brother, Ramtonoo Dutt. They recovered judgment: the defence was, a purchase (in the name of another) from Choitonchurn, whose title or power to sell was under an instrument of division and arrangement between the three unseparated brothers *made before the will was discovered or known.* The title conveyed by Choitonchurn, both upon construction of the instrument and because of the latent will, was (as it would seem, successfully) contested by the executors; the legal validity of the will or of the executors' title was not disputed by Mr. Strettell, defendant's counsel. *Chambers' and Hyde's notes.*

Hindu Law

ROGONAUT GHOSE *v.* BUDDINAUT MITTER, RAJA RAJE BULLUB AND RAMHURRY GHOSE. (1790)

Pleading; Executor de son tort.

Bill of discovery in aid of an action against parties dealing with assets of a deceased Hindu (the heirs being out of jurisdiction), as executors de son tort: demurrer, that sufficient case not made, allowed.

Semble: There may be an executor de son tort of a Hindu estate (*a*).

Chambers' notes, Nov. 11, 1790; *and Registrar's minute book.*

BILL of discovery in aid of an action upon a promissory note or agreement of one Roy Gower Hurry. The bill states, that Roy Gower Hurry had died intestate, leaving a widow and three infant daughters (Hindu inhabitants of Moorshedabad, not subject to the jurisdiction of the Supreme Court), and leaving a large property in Calcutta—that shortly after the death, Buddinaut Mitter his nephew, and Raja Raje Bullub his brother-in-law, and the other defendant, "acting or pretending to act on the behalf and by the authority of the said widow (who as they somtimes insist is a hindoo woman of rank and cannot go abroad or transact any business in her own person but must according to the usual custom amongst the hindoos appoint some friend or relation to manage her affairs) they the said B. M. &c. or some or one of them possessed himself or themselves of the whole or the greatest part of the said property and effects of the said Roy Gower Hurry deceased for and on account of the widow of the said R. G. H. and his said three daughters or some or one of them or under pretence thereof and are now or lately were collecting in the debts due to the estate of the said R. G. H. or endeavouring so to do and are also or lately were selling and otherwise disposing of the whole of the said property estate and effects." The bill charges attempts to realize particular securities and to compromise with debtors to the estate, by the defendants "for their own use profit and advantage or for the use profit or advantage of the said R. G. H.'s said widow and children or some or one of them or for some other purpose in prejudice of your orator's said just demand." The bill also charges the

(*a*) Note VIII.

intent of defendants to send the assets out of the jurisdiction in order to defraud the complainant, and a fraudulent dealing with and concealment of the assets, and proceeds—"which three persons or some of them your orator charges to be executors in their own wrong of the said R. G. H. deceased by having possessed themselves respectively of the estate assets and effects of the said R. G. H. and that with the fraudulent views and intentions aforesaid particularly as against your orator who they or some of them know well to be a fair creditor of the said R. G. H." The bill then charges that the defendants have refused to administer to the estate as creditors, which they pretend to be, or to give any information respecting the assets or liabilities—that the plaintiff has sued them as executors, and cannot recover without the discovery sought. *Hindu Law*

The defendant Raja Raje Bullub demurred, assigning for cause, "that it appears of the complainant's own shewing in his said bill that this defendant is not executor in his own wrong of the said R. G. H. deceased and that the said complainant hath no right to maintain his said action at law against this defendant or to obtain by the aid of a Court of equity the discovery he prays for by his said bill—"

Davies, Burroughs and *Cassan*, for the demurrer.
Jas. Dunkin, Ledlie and *Strettell*, for the bill.

It was contended,—that the bill shewed defendants had acted only as agents or attornies of the heirs and representatives of the deceased; to which it was answered,—that the bill charged defendants with having embezzled the effects for their own benefit (*a*): and, as to the appli-

(*a*) The junior advocate of the complainant also argued,—If it should appear, from the discovery made by the defendants, that the widow was born in Calcutta, since the conquest, I contend, that she is in all respects a British subject, capable, by the Eng-

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ROGONAUT GHOSE v. BUDDINAUT MITTER

cation of Hindu law to the question, there was the following argument:—

For the demurrer,—This is a question depending on the law of Hindus concerning matters of inheritance, in which the Court cannot take up and adopt the English rules of law respecting executors in their own wrong. The bill does not state any right according to the Hindu laws of inheritance, nor lay any facts before the Court from which the judges can infer, that the defendants have made themselves answerable for this inheritance to those who have or pretend to have had demands on the deceased.

For the bill,—Justice and the law of nature make liable persons who are in the circumstances of the present defendants. An English Court of equity will compel a discovery wherever justice requires it. There is nothing in the bill which shews Rajah Raje Bullub to be a Hindu, and it is to the forum rei that the stat. 21 Geo. III refers. It is contended, that we ought to have stated the Hindu law under which we claim to be paid the debt of a deceased Hindu out of his property in the hands of defendants: the answer is, that the law which requires the judges to determine according to the Hindu law supposes them to be cognisant of it, or at least that they will take care to inform themselves of it, in each case to which it is applicable. We are entitled to a discovery, whether we make out a claim or not, *Bp. London* v. *Fytche* (*a*).

There is no note of the Court's decision; but, on the following day 12th Nov., the Registrar's minute is,—

"Demurrer allowed with costs, with leave for complainant to amend."(*b*)

lish law, of holding lands in England, and subject to the jurisdiction of this Court, though she resides at Moorshedabad.

(*a*) 1 Br. C. C. 96.

(*b*) From this it would appear that the defect in the bill was considered to be of form, not substance. Further prosecution of the suit has not been traced.

DOE DEM. SREE OODOY COWER *v.* MOHUN LALL BUSSEY. (1790-1)

Hindu Law

Streedhun. Pleading.

B executes an instrument of gift of land &c. to his wife, O, in order to pacify her anger on occasion of his taking another wife. O can maintain ejectment (upon the ordinary form of plaint) against B.

Chambers' notes, Nov. 29, Dec. 1 and 2, 1790; Jan. 24, 1791.

THIS action was by the wife of a Hindu against her husband, to enforce a gift to her of land under the following circumstances.

A quarrel had arisen between them, in consequence of the defendant taking a second wife; which he did because the lessor of the plaintiff had not brought him male issue. She threatened to disgrace or destroy herself, unless the husband gave her up "his riches": he accordingly formally executed an instrument of which the following is a translation:

To Sree Motee Ouday Kanwur
I Sree Mohun Laul Bussey write the following Farkuttee (*a*) I give of my own free will my three dwelling houses and a half and garden and the dwelling house formerly Roghounaut Sircar's also all my riches apparel cloaths which exist according to the papers. Should my heirs make any claim on you it is false. To this agreement I write this Farkhuttee the year 1193 the 16th Assur.

Ledlie, Strettell and *Richardson,* for the defendant,—This action not being maintainable by English law, it should have been shown in the plaint that the parties are Hindus, to admit proof of a title by Hindu law. The instrument cannot have legal effect: it is an attempt to transfer all the husband's property to his wife without the intervention of trustees; and it does not import

(*a*) Explained by a note of the translator, Mr. Blaquiere, to be, "an instrument stating that a party has no claim on another." The translation was verified, vivâ voce, at the trial: Mr. Blaquiere was appointed principal interpreter (upon the death of Mr. Chambers) 22nd October 1793.

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DOE DEM. SREE OODOY COWER v. MOHUN LALL BUSSEY.

consideration, as an English deed: but the actual consideration is separation,—it is therefore avoided by the subsequent cohabitation, which is proved. Although by Hindu law a wife may have separate property, her husband may apply it, in case of exigence, to his own use. The purport of the instrument is, that the gift shall operate after the defendant's death, and so it was intended. No evidence has been adduced, that a man can by the Hindu law make a gift such as this is contended to be, to his wife.

Davies and *Shaw* contra,—The plaint in ejectment does not set out title: it was therefore unnecessary to aver the status of the parties (*a*). Whether or not the instrument can operate without the intervention of trustees, is a question for the Pundits. Rules of law are not to be proved by the testimony of witnesses.

A Case was submitted by the Court to the Pundits: their opinions and the authorities cited by them were in favor of the wife's right to recover (*b*).

Afterwards, upon the application of defendant's advocate, a further argument was heard: viz.

Richardson, for the defendant,—Judicial determinations here are to be conformable to the law of England, wherever the lex loci is silent. Deeds executed by force or terror, though not amounting to duress, are not to be enforced, *Atty. Gl.* v. *Sothon* (*c*). So by the Hindu law:—"If" says Katayena Muni "a man signs an

(*a*) The Court held this objection to be no ground of nonsuit. It is observable, that neither in the plaint, nor in the petition to defend did it appear that the parties were husband and wife.

(*b*) The case and the answers are given in Sir Robert Chambers' MS. and infra, Note IX.

(*c*) 2 Vern. 497.

agreement through fear and for the preservation of his life, it is not binding; and if he promises all that he has to any one, on condition that he helps and preserves him, and the condition is performed, still the preserver shall not receive the whole property of the party preserved." *Hindu Law*

The threat here used was, if the husband married another, she would destroy herself, or quit his house; and under this threat he made the gift. Though the Court is required, by statute, to pay regard to the Hindu law, in certain cases; yet, the form of proceeding is not altered by statute. Power is indeed given to the Court to make rules for that purpose; but, till such rules are made, the English mode of proceeding must remain: a woman cannot sue her husband. Although an English woman may have separate property, and may even hold it without a trustee, as may be inferred from *Lucas* v. *Lucas* (*a*), she cannot sue without prochein ami, who is to answer the costs. This instrument conveys chattels as well as real property; and it is a general rule in the transfer of chattels, that the possession must accompany and follow the deed, *Edwards* v. *Harben* (*b*).

Davies, contra, relied upon the answers of the Court Pundits.

The Court (*c*) were unanimously of opinion, that there must be judgment for the plaintiff; directing however all parties to remember, that, according to the opinions of the Pundits, the lessor of the plaintiff has only an estate for life in the premises.

Sir Robert Chambers adds,—Sir Wm. Jones spoke a few words on the questions of Hindu law.

Judgment for lessor of plaintiff.

(*a*) 1 Atk. 270.
(*b*) 2 T. R. 587.
(*c*) Chambers, Hyde and Jones Js.

Hindu Law

DOE DEM. BAUGBUTTY RAUR *v.* RADAKISSNO MOOKERJEE. (1791)

Widows.
One of two widows recovered an undivided moiety of her husband's land.

Chambers' notes, March 12, 1791; *and S. C. Records.* (*b*)

RAMSOONDER Oudicarry left two widows and no children. This action was by one of the widows to recover possession of an undivided moiety of the houses and land of her husband: it was undefended. She proved a primâ facie title in Ramsoonder Oudicarry to part of the premises in the plaint, viz. four biggahs and some cottahs at Sootanuty in Calcutta (ancestral property); for an undivided moiety of which the Court (*a*) gave

Judgment for lessor of plaintiff.

DOE DEM. RADAMONEY RAUR *v.* NEELMONEY DOSS. (1792)

Forfeiture. Widow.
Incontinence of widow creates a forfeiture of her claim to the succession. (*c*)

Chambers' notes, June 30 and July 3, 1792. (*d*)

GOWERHURRY Doss and his elder brother, the defendant, inherited land from their father, and were, with their mother and sisters, an undivided family. Gowerhurry died without issue: his widow, the lessor of the plaintiff, brought this action for an undivided half share of the family houses and land, which were in Calcutta.

(*a*) Hyde and Jones Js.

(*b*) Some of the old localities of this city are thus described by a witness from the collector's office: — Dhee Calcutta lies to the south east of Calcutta: some part of Burra Bazar is in Dhee Calcutta—all Sootanooty is within the town of Calcutta—The whole of Dhee Calcutta is within the limits of Calcutta—That house is in Bazar Calcutta: the Burra Bazar is not the name of that part: it is not situated in Dhee Calcutta, it is in Bazar Calcutta.

(*c*) Note X.

(*d*) The depositions and proceedings have also been referred to: there was conflicting evidence as to the lessor's conduct, but credit was given to the testimony of Kissoorey Dossey the mother. Radamoney's father appears to have been the real plaintiff.

The mother, being called by the lessor of the plaintiff, proved, on cross-examination, that the latter had, after her husband's death, been incontinent, and had long since voluntarily quitted the house and protection of her husband's family. She was, at the time of the action, living with her own father and brothers. *Hindu Law*

THE COURT (*a*) being of opinion, that the lessor of the plaintiff had, under Hindu law, forfeited, by her incontinence, her right to her husband's estate; there was a

Nonsuit.

KISENMOHUN GHOSE LEGAL HEIR AND REPRESENTATIVE OF RAMCHURN GHOSE *v.* BEEJOYRAM SURMONO. (1792)

Benamee.

Proof of a loan from R to B and a written acknowledgment of the debt by B to P the reason of the substitution of P's name being explained, and P (at the trial) disclaiming any interest in or knowledge of the transaction —— *Held*, to support the common count, in an action by R's heir, upon promises to R.

Chambers' notes, April 2 and 3, 1792; *and S. C. Records.*

ASSUMPSIT on the common money counts, upon promises to the deceased. An instrument of which the following is the translation was given in evidence:

Sree Sree Raam

SREE BEEJOYRAM SURMONOH inhab. Putkabauree. Five thousand and one Gotepoorah rupees.

To the benevolent Sree Pirtaup Narain Baboo.

I Sree Beejoyram Surmah execute the following note of hand (*b*). I have borrowed from you five thousand and one Gotepoorah Arcot rupees on which I will pay interest at the rate of one per cent per month. The

(*a*) Chambers C. J., Hyde, Jones and Dunkin Js.

(*b*) বন্দ পত্র

Hindu Law

KISENMOHUN GHOSE v. BEEJOYRAM SURMONO.

agreement is that I repay the money with the interest due thereon in the month of Srawbon: on this condition I have received the money and give this bond. (*a*) The year 1188, 25th Joystee.

Amongst other witnesses subscribed to this document, is Pertaubnarain Ghose; who thus explains the transaction, when called for the plaintiff at the trial:

In the Bengal year 1188 I was in the service of Mr. Day, I was in his service as gomastah to transact his cloth business. I knew Ramchurn Ghose in his life time. He was head sircar in Mr. Day's service in the year 1188. Ramchurn Ghose died on the 9th of Justy in the year 1195. The plaintiff is the son of Ramchurn Ghose: he is his only son now living. I know the defendant in this cause. I am a subscribing witness to this paper [the note]: here is my name written on the back of it by myself. The defendant signed this paper in my presence, he borrowed the money and in consequence thereof he signed this paper. Mr. Day one day asked a sum of money from Ramchurn Ghose. I was not present at this. Ramchurn came down and told me, and he desired me to go for the defendant and tell him to come to him, Ramchurn, at his lodging. I accordingly went to the defendant and told him that Ramchurn wanted him, upon which I went away, and in the evening the defendant came to Ramchurn's house where I was present: on the defendant coming there, Ramchurn told the defendant that Mr. Day wanted to borrow Rs. 5000 and added "I have no money myself at present to advance him, do you lend him that sum, I have mentioned your name to Mr. Day." The defendant thereupon said—"I have no money at present, I dont know how I can lend that amount to Mr. Day." Ramchurn thereupon answered—"here, I will give you the money do you carry it to Mr. Day and lend it him and take a bond in your own name." The defendant replied—"very well, I have no objection to do so." Ramchurn thereupon said—"you are going to receive the money from me, do you give me a bond for the amount" and added "our agreement is this, that you are to pay me when you shall receive the money from Mr. Day." After this conversation, there was a note drawn for the amount I before spoke of, and the money was taken out by the servant of Ramchurn Ghose and brought into their presence: the defendant thereupon received the cash and executed the note, and

(*a*) খত.

Hindu Law

I became a witness to it. This note was taken in the name of Pertaubnarain Baboo, because Ramchurn Ghose was the servant of Mr. Day and did not like to have the note taken in his own name; whatever money he used to advance to Mr. Day he constantly kept his own name secret and took the bonds in the names of other persons. It is customary for the natives of this country to take securities for money in the names of other persons. The defendant is called Beejoyram Mookergee: Surmah or Surmonoh is a title given to all bramins. Mr. Day gave a bond for the Rs. 5,000 to the defendant: it was given two or three days after the note bears date. I did not see the money counted. Purtaubnarain Baboo's house was in Calcutta, but I did not know at that time where he lived; he had dealings with Ramchurn Ghose at that time at Dacca, and Pertaubnarain's father lived at that time at Dacca near the house of Ramchurn. Pertaubnarain's father had many dealings in the money way with Ramchurn, and they used to have money in each other's hands at the time I have been speaking of, and before and after. Pertaubnarain himself had no dealings at that time with Ramchurn, he was then a child, it was his father who had the dealings with him. Ramchurn kept no books of account, he had no transactions of his own, he had no gomastahs or writers.—— I cannot say whether at the time I have been speaking of Ramchurn had money in Pertaubnarain's hands or Pertaubnarain in his or not; there is nobody that can tell now whether at the time the note was given Ramchurn had money in his hands belonging to Pertaubnarain or whether Pertaubnarain had money in his hands belonging to Ramchurn, as there were no memorandums kept. I cannot tell whose money it was for which the note was given, whether for Pertaubnarain's or for Ramchurn's, but it was Ramchurn who brought out and paid the money.

Pertaubnarain Dutt deposes:

My father's name was Ramdololl Dutt. In the bengal year 1188 he lived at Dacca, he is dead: he died, I think, either in the month Justy or Assar year 1188. I am sometimes called Pertaubnarain Baboo. I was a relation of Ramchurn Ghose the plantiff's father, he was brother-in-law to my father's brother and to my father. I know nothing about this note now shewn to me: I never gave any consideration for it, I know nothing at all about it.—Some people call me baboo, my servants call me so: my father was a man of property, and I was called baboo from my infancy.

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KISENMOHUN GHOSE *v.* BEEJOYRAM SURMONO.

The money was proved to have been repaid, by the attornies of Day (Cockerell and Co.) to the defendant in this action, under a bond of indemnity (*a*) from defendant and another.

Burroughs for defendant—I deny that an action of assumpsit, with these common counts, can be supported by evidence of a note payable to a different person from the plaintiff.

THE COURT (*b*) found a verdict for the plaintiff for Arcot Rs. 5,001 with interest at 10 per cent.

Judgment for plaintiff.

(*a*) The condition recited a bond of 25th April 1780 by Day to the defendant for Rs. 5,001 at 10 per cent., and proceeded—And whereas the said Matthew Day on payment thereof being demanded said that he was possessed of a certain note or instrument in the bengal language given by the said Beecharam Mookerjee [viz. this defendant] to one Pertaubnarain Baboo but on account of and in trust for one Ramchurn Ghose now deceased who was the banian of the said M. D. for the sum of Arcot Rs. 5,001 bearing date the 25th Justee 1788 at such time and in such manner as therein particularly mentioned and whereas the said M. D. for the purpose of securing the payment of the same sum in the said note contained to the family of the said Ramchurn Ghose did propose to the said B. M. to deduct and retain from the said bond so due from him to the said B. M. the amount due thereon and whereas the said B. M. in answer to such requisition did declare that he had fully paid the same and that he was not indebted either to the said Ramchurn Ghose or to the said Pertaubnarain Baboo but did agree that if the said M. D. would pay off and discharge the said bond so due from him as aforesaid that he would give security to the said M. D. or to his attornies for the payment of whatever monies should be proved due from him on the said bengal note provided such proof shall be made and given within six months from the day of the date thereof and whereas the said M. D. being content therewith &c.

(*b*) Chambers C. J., Hyde, Jones and Dunkin, Js.

SOOBERDRAW DOSSEY WIDOW HEIR AND LEGAL REPRESENTATIVE OF KISNO DEB GOOPTOO DECEASED *v.* RAMCAUNT DUTT. (1793)

Hindu Law

Benamee. A written acknowledgment of debt by R to C, the money being in fact lent by D; together with a written declaration by C (after D's death) of that fact; and a promise by R to pay D's heir — *Held*, sufficient proof of a debt by R to D, in an action by the heir. *S. C. Records.*

ASSUMPSIT on the common money counts, upon promises to the deceased. Defendant was arrested under a capias obtained upon an affidavit in which the debt was thus stated, "—— in the sum of Sa. Rs. 291 being the principal and interest due upon an instrument in writing in the Bengal language called a Bengal bond entered into by the said defendant in the name of one Kisno Caunt Gooptoo to the said Kisno Deb Gooptoo in his lifetime. And this deponent further saith that by the directions of the said Sooberdraw Dossey he hath frequently applied to the said defendant for payment of the said bond which he often promised to pay." On the trial two instruments were produced, viz.

exhibit A *translated*

Sri Krishna
Sahaya

SREE RAM CONTO DUTT inhabit. Sootanooty

To the lender the benevolent Sree Krishna Caunt Gooptoo. I the borrower Sree Ram Caunt Dutt execute the following note of hand.

I have borrowed Sa. Rs. 201 from you on which I will pay interest at the rate of one per cent per month and engage to pay the same with the interest due thereon in the month of Sawon. To this condition having received the money I execute this note of hand the year 1195 the 29th of Pous.

(witnesses)

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exhibit B *translated*

Sri Sri Durga
ever be with me

SRI KISNO CONTO GOOPTO

To Sree Mooty Soobhadraw Dossey

I Sree Kisno Caunt Goopto do write this declaration paper to the following purport, that the deceased Kisnodeb Goopto did in his lifetime lend a sum of Sa. Rs. 201 to Sree Ram Caunto Dutt on a bond of nick-name (*a*) dated the 29th of Pous year 1195 which bond he took in my name, the money is his, I have no claim to it. To this purport I do write and give. The end. Dated the of Assin year 1199.

(witnesses)

Kisno Caunt Goopto, being called for the plaintiff, deposed, that he signed the declaration B at the request of the plaintiff, that it referred to A which was a bond taken in the name of the witness for money lent by Kisnodeb Goopto to Ram Caunt Dutt. Another witness deposed, that, after the death of Kisnodeb Goopto, he demanded the amount of A from the defendant, who said, if the man to whom the bond was made payable would indorse it he (the defendant) would pay it—that, in consequence of this answer or objection of the defendant, the paper B was obtained, which was taken by witness to the defendant, who then promised to pay the plaintiff.

The action was contested, as appears from the cross examination of the witnesses. It was tried in the last sittings of 1792; and there is an entry upon the Roll, in the first term of 1793, of a verdict for the plaintiff, with costs (*b*).

Judgment for plaintiff.

(*a*) This is a translation of তমসুক বিনামি *tamasook benamee.*

(*b*) The record is incomplete, and judgment not signed.

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DOE DEM. HEERA SING *v.* BOLAKEE SING. (1793)

Will. Evidence of transfer of ownership, or power of management.

O, having neither child nor wife, writes, on four separate slips of paper (*B*), a disposition and rules for the management of his estate after his decease, without address, date, signature or attestation; by which he confers the general management and control on H, his brother-in-law.

O himself calls the writing *B maliknameh*, and makes declarations, contemporaneously with and subsequent to writing it, that H is to possess and manage his property after his death.

O's heir, D (the son of his brother), is provided for, with his other relatives and dependants, by *B*; but the residue and bulk of the property is given for charitable and religious uses, under the management of H. There is evidence that O, before writing the will or maliknameh had virtually adopted D, and publicly announced him as his heir and the future owner of his estate. On O's death, H takes possession, but, after some years, delivers to D the bulk of the estate and an inventory (professedly of the whole), together with an instrument by which he makes over the entire estate and management to D.

H afterwards partially resumes the possession and management; and he makes a testamentary disposition of his authority and interest under O's will, in favor of H. S., the grandson of H by an illegitimate son. H. S., after H's death, brings ejectment against D's executor, for a house, part of O's estate (not specifically bequeathed): Nonsuit. (*a*)

S. C. Records; and Chambers' notes, Aug. 2, 3, 5, 1793.

PLAINT filed July 9, 1792, to try the title to a dwelling house in the Burra Bazar, commonly called Omichund Baboo's house. The trial commenced on the 13th August, and was still proceeding (part of defendant's case having been gone through) when, on the 6th November, *Burroughs*, for defendant, moved—that a case and questions then delivered by him into Court be proposed to the Pundits of the Court for their opinion thereon, and also that the statement and questions should be translated into the proper languages by and under the direction of Mr. William Chambers, the Persian translator and chief interpreter of the Court, for that purpose. On consent of *Dunkin* for the lessor of plaintiff, a rule accordingly was granted.

On the 9th January 1793, Mr. Chambers delivered the answers of the Pundits. On the 24th January an addi-

(*a*) This action was brought under an order made on the equity side of the Court, 25th June 1792, in the cause *Sree Cowar and Heera Sing* v. *Bolakee Sing, Ramnarain Misseree, Jetram Tagoor, Nemoye Bose, Cossinauth Baboo, John Bayne, Alexander Colvin, David Colvin and Charles Fuller Martyn.* By that order, an injunction was granted upon the terms of bringing this action; the defendant, Bolakee Sing, being directed to admit—that the house was the fee simple estate of Omichund Baboo, dec. of which he died seised and possessed—that Heera Sing or those under whom he claims were in possession of the said house within 20 years before the notice of ejectment—and that Rajah Dialchund dec., under whom the defendant claims, was the lawful and only surviving child of Gulabchund the only brother of Omichund. A receiver was granted by the same order. The result of the ejectment apparently put an end to the equity suit. On the 22nd Nov. 1793, the injunction was dissolved, and the receiver discharged: this is followed by an order for the receiver (Sookmoy Roy) to account with and to pay to Bolakee Sing.

No further proceeding has been traced; although an order obtained 7th Nov. by complainants to dismiss their own bill with costs, was, on the 11th, discharged by consent.

The defendant's taxed costs of the action exceeded Sa. Rs. 9,300.

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DOE DEM. HEERA SING v. BOLAKEE SING.

tional question, agreed on by the advocates and approved by the Court, was ordered to be proposed to the Pundits. On 5th and 6th March, *Burroughs* and *Strettell* for defendant moved, on affidavits—that the opinions given by the Pundits of the Court be set aside, and that the parties be at liberty to examine Pundits learned in the Hindu law, upon oath, as witnesses. *Dunkin* and *Shaw* opposed (*a*). During the argument, a further query was put by the Court to their Pundits, who then gave answers in Court. (*b*) The rule was refused; but the opinions of the pundits annexed to the affidavits were ordered to be filed, (*c*) with this indorsement upon the translations—"Not read because the original was not given on oath and is not considered as evidence of Hindoo law." The Court Pundits were also then ordered to reconsider their opinions, and to bring before the Court the authorities upon which they are grounded. On the 7th March, upon the motion of *Burroughs*, other questions, in explanation, were put to the Court Pundits.

The Case submitted to the Pundits was as follows:

That the house for the recovery of which this action has been brought was the property of Omirchaund Baboo: that Omirchaund intermarried with the sister of Huzzrymull: that Omirchaund died in the month of Agron in the Bengal year 1165, without leaving a widow(*d*) and without ever having had any issue: that he had one brother only, named Golaubchaund, who died before Omirchaund, leaving an only child, a daughter

(*a*) as volunteers, in the first instance, the motion being for a rule nisi.

(*b*) This would appear to be the same question as that ordered on the 24th January.

(*c*) Note XI.

(*d*) Ramduloll Mittre, the witness who saw Omichund writing his will, deposed (on cross examination) on the 14th Aug. 1792:—"I knew the widow of Omichund, her name was Bou Ooday Cowar, she is dead. She died, I think,

named Bowannee Bibbee, who survived Omirchaund, and had, at the time of Omirchaund's death, a lawful and only child, named Dialchaund, who was, at the time of Omirchaund's death, about the age of 14 or 15 years, and who survived Omirchaund and Rajah Huzzrymull, hereafter mentioned. That, after the death of Omirchaund, Huzzrymull took possession of his property; and it is now, on the part of the plaintiff, alledged, that Huzzrymull claimed a right to the possession and management of the property, under and by virtue of the original of the papers accompanying this, marked B. That, on the part of the defendant, it is alledged, that Dialchaund, who survived his mother Bowannee Bibbee and also her husband (his father), had a right to the property of Omirchaund, as his heir and next of kin. That the original four slips of paper whereof copies (B) are herewith sent you, are all in the hand writing of Omirchaund Baboo, and in the Naghree character; and those four slips of paper were, part of them, written by Omirchaund Baboo at different times, in the presence of one witness, on two or three different days; but all of them were written about a month before his death, namely in the month of Cartik 1165. That, on the last day that the witness saw him, Omirchaund Baboo, in the act of writing the said papers, he, Omirchaund, expressed himself to the witness in the words following,—"I find myself very uncertain of health, and there is no person after my death to take care of my property, except Huzzrymull. Huzzrymull in my presence now is managing my business, and is well acquainted with my affairs. By this Will which I am make

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about 10 or 15 years ago: she survived Omichund: I dont know that she performed the sradd of Omichund: she used to live in the inner apartment, what she did there I dont know, she never used to come out."—The statement in the Case however, made by consent, must be taken as the fact.

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ing, I have distributed and given to those who are herein mentioned: after giving to them whatever I have mentioned in this Will, the remainder I give to Sree Sree Gobind Nonauck, to be applied for his worship, and, to manage that, I have appointed Rajah Huzzrymull in my room, and have made him master of all."—That, about a fortnight or fifteen days before Omirchaund's death, he declared to another witness his intention to go to Umbrashore, a place of pilgrimage; and that, on being then asked by the last mentioned witness,—who will now be our protector as you are going away from Calcutta?—he, Omirchaund Baboo, answered,—"I made a malliknamah to Huzzrymull, and I have appointed Rajah Huzzrymull master or mallick; he will protect you."—That Rajah Huzzrymull was present at this last conversation, and that Omirchaund pointed him out, when he so expressed himself. That, on being asked by the last mentioned witness,—what was the tenor of his mallicknamah, or the power which he had given to Huzzrymull—Omirchaund Baboo said—"I have distributed my fortune, in part to those I pleased, and the remainder I have left to Sri Gooroo Gobind; it shall be applied for his worship, and the manager of it I have appointed Rajah Huzzrymull; in my absence (or after my death) he will act, and do as I have done; he will stand in my place." That Omirchaund, in such his last conversation, used no other term but the term *malliknamah*. That Huzzrymull, for many years before Omirchaund's death, had managed all the affairs of Omirchaund; and, immediately on the death of Omirchaund Baboo, Huzzrymull entered into the possession of all his property, real and personal, and continued in the quiet and uninterrupted possession thereof till the Bengal year 1180 or 1182; Rajah Dialchaund residing, all that time, in Calcutta, and being about fourteen or fifteen years of age at the time of the death of Omirchaund Baboo. That Dialchaund

dictated to a writer of Huzzrymull the original of which the annexed paper D is a copy; and after the writer had read what he had written to Dialchaund, in the presence of four persons, Dialchaund subscribed thereto the name of his mother Bowannee Bibbee and his own name: that, at the time, Bowannee Bibbee's affairs were managed by Dialchaund, but it does not appear that she knew of the transaction: that when Dialchaund signed the original of paper D he was sixteen years of age. That Rajah Huzzrymull died on the 6th Justy in the Bengal year 1190: that about three days before Huzzrymull's death, he delivered to his private gomastah a rough draft of a Will, written in the Bengallee character, and gave the said gomastah directions to make a fair copy of the draft: that the said draft was not in the hand-writing of Huzzrymull, but the paper marked C, herewith sent you, is an exact copy of the said draft, and was made out from the said draft by the said gomastah, acccording to Huzzrymull's orders: that, in the morning of the day on which Huzzrymull died, he ordered the said paper C to be brought and read to him, which was done accordingly, and it was read to him faithfully; and after it was so read, Huzzrymull, in the presence of several persons, said—" very well, it is an exact copy and I will sign it when Mr. Levett is here." That messengers were sent, by the desire of Huzzrymull, to Mr. Levett's house, desiring the attendance of Mr. Levett's banian, that he might be a subscribing witness to the execution of the said paper C: that Mr. Levett's banian did accordingly attend for that purpose; but the gomastah who, by the orders of Huzzrymull had copied the draft and had in his possession both the draft and fair copy, being out of the way and not to be found, Huzzrymull, owing to this, did not sign the said paper C. That, in the evening of the said day, the said paper C was again brought to Huzzrymull, and he was then unable to sign it; but, upon that occasion, Huzzrymull, in the presence of several per-

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sons, expressed himself in the words or to the effect following—"My hand will not assist me to write: this (meaning the paper C) is my Will; when I die, deliver this Will to Mr. Levett. I have already appointed him my attorney; he is to act also as my attorney after my death; and tell him, when Hirra Sing arrives at a proper age to deliver over every thing to him as written in the Will." That Huzzrymull died that night, and that the original of paper C was, according to the said directions of Huzzrymull, delivered to the said Levett, as the Will of Huzzrymull, the second day after the death of Huzzrymull. That, five or seven days before Huzzrymull died, he declared to a witness who was one of his friends, that he would make a Will to the purport and effect of the paper C. Your opinions are therefore desired upon the following questions:

1. Whether the four slips of paper marked B, and said to be the Will of Omirchaund Baboo, without having any word declaring them to be concluded, and without being sealed, dated, signed, or witnessed, can have any effect, and if any, what effect?

2. Whether Huzzrymull, under the original of the papers B, had any right to the management of the property of Omirchaund, after Dialchaund became of age?

3. Whether Huzzrymull, under and by virtue of the original of papers B, had any right, in the life time of Dialchaund, to make such a disposition of the management of Omirchaund's property as the disposition contained in paper C?

4. Under the circumstances above stated, is the paper C valid or invalid, as the Will of Huzzrymull, and has Heera Sing, under and by virtue thereof, any and what right to the property of Omirchaund, or to the management thereof?

The exhibits B, C, D were as follows;

(B) four separate papers: *Hindu Law*

Sree

First—To be paid to the family and dispatch them

1,00,000—To the elder lady and Baboo Dya Chund Jee, one lack in the following manner—

65,000 To be kept employed.
5,000 For the elder lady's expences in charitable and religious purpose.
5,000 For the daughter in law Ooday Coovur.
15,000 For jewels &c. at the wedding of Baboo Dya Chund.
5,000 Manick is to be left in the possession of Ooday Coovur, and the daughter in law will have him married.
5,000 To be paid to Dukkhinee Roy.

1,00,000 One lack.

Having heard that Dukkhinee Roy has intentions to raise difficulties, his attempts are declared futile, the lady is mistress, let her employ the five thousand rupees given her in whatever manner she chuses. I have lately employed Baboo Rutten Chund, the son of brother Bukshmull; he will manage the banking business at Moorshedabad, let him avoid causing outstanding debts; whatever profit shall arise from the banking business through the assistance of God, two-thirds thereof shall be paid to Baboo Dya Chund Jee and one share to Ruttun Chund Jee. I have now given him as a fund

25,000 Not having interest, for the expences of the house, to remain employed.
50,000 To remain on interest at the house, at the rate of six anahs, to be paid to Beebee Sahib and Baboo Dya Chund, for their household expences, cloths, food, servants &c. necessaries which they may chuse to keep, their wills being uncontrouled, and no one having any right to interfere. It is my advice that 2,000 rupees should be expended annually
500 Baboo Dya Chund Jee's expences, servants, apparel &c.
300 For the lady to spend in charitable and pious purposes.

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300 For Manick's support, who is to live with the daughter-in-law.
200 For her holy purposes.
100 For Manick's necessary charges.
900 For household expences of every kind. If they wish to expend more than this sum, they may act as they chuse, the money being their own, an annual (profit) may be received, and there is no scarcity in any respect whatever: should amity not exist with Bukshmull, they will act as appears best to them; after Baboo Dya Chund's marriage the annual necessary expences are to amount to one thousand rupees.

Nikkree Bhabees account ..... 30,000 thirty thousand rupees.

10,000 For Baboo Girdharee's maintenance.
2,000 To Poopo for gifts and charitable purpose.
1,000 To the two Bahoos (daughters-in-law).
1,000 To Narayanee for gifts &c.

14,000

The remaining sixteen thousand for Bhabeejee's maintenance.

2,000 Employ two thousand of this in holy purposes, and place the remainder in a secure place, at a low interest, if you think proper, but this is not my advice. You should keep the money in your own hands, fourteen thousand is sufficient to maintain you the whole of your life, and by lending out money it may be lost, and it is sufficient to maintain you all your life-time. The management of the donations in charity is Bhabee Jee's, and no one has a right to interfere therein. Should Girdhari Mull not conduct himself properly and be disobedient, you will keep the 10,000 rupees in your own possession, and pay him 600 rupees per annum, for his food and raiment. Baboo Syamjee made several buildings at Moorshudabad, in which my money was employed, but I have no claim on them, Nikkree Bhabee being mistress of the whole at Moorshudabad, should any other lay a claim it is false. Should Bhabee Jee think Girdhari Mull fit for the gomastahship she may appoint, being mistress to do so, and let all the relations comply with her will.

Particulars of what remains in the charge of Baboo Hazooree Mull and Mootee Chund.

32,000 Thirty Two thousand as follows:

5,000 Five thousand to the daughter-in-law, for gifts and charitable purposes.

4,000 For Motee Chund's wedding.

1,000 To Neeloo (*a*)

1,500 To Mauttee and other girls. Let the daughter-in-law settle the distribution.

500 To be given to Rammoo Jee, for gifts and charitable purposes, exclusive of which, you will make her an allowance for her maintenance, according to what you can afford.

I have given wherewith to Huzzooree Mull to maintain himself, he has no further claim on my estate; my whole estate is the property of Sree Gobind Jee Naunuck, I give you authority that after my death the reputation may be preserved. I have placed you in my room, may Sree Jee preserve you, you will exceed me in doing good and amass great wealth, you will give to the girls of the house after my death for their subsistence

5,000 To Luckkea, But let her remain under the order of Nikkree Bhabee and Hoozree Mull Baboo. There is plenty for food and raiment exclusive of this. Luckkee has no claim.

2,000 To Shamma. Let her remain under the order of the daughter-in-law.

500 To Koondun.

500 To Hurrdaasee.

400 Raaurkee.

500 To Chaunda,

500 To Shaum Dausee.

300 Fundun's marriage.

400 To Sooneah.

(*a*) "— Hll. left a son who was called by some Runna Baboo, others call him Loll Sing; he was an illegitimate son by a maidservant, I think she was purchased, but I speak by guess. Hll. had another son by a woman of that kind, who was the father of Heera Sing; his name was Roy Mootechund, and his mother's name was Neeloo." *Ramdullol Metre's evidence.*

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400 To Radheeah.
400 To Bishnee.
100 To Krishnee Nikkree Bhabees.
200 To Counjoo Daye's gifts and charitable purposes.
100 Maultees reward.
400 To Gungeca.
700 To Bundagee, at her son and daughter's wedding—300 maintenance.....400
200 To Suddah's mother, for charitable purposes.
500 To dayes and dependants on the inner apartments.

12,800 Twelve thousand eight hundred (*a*)

As long as I exist, I shall take all proper care; after my death, all is a gift. But the money is to remain in the hands of Nikkree Bhabee and Huzzooree Mull Baboo. Let them take the same care of all that I did, and let them give double the wages I do. After my decease, should any one wish to act inconformable to your wills, punish such person, and pay the allowance or stop it, just as you please. Should they receive the money into their own hands, they will not mind any one; it is necessary to keep them in subjection. Whatever ornaments are to be made after my decease, are to be made out of this money. Let this money remain in the hands of the Baboo, and Nikkree Bhabee will cause cloaths and raiment to be furnished by the Baboo out of the profit arising thereon. Should any one be ill or die, then the donation is to be applied to the rites of the deceased, and distributed at the meeting. Pay ten rupees monthly for the donation to Lukkiah, and let Lukkiah remain under the order of Nikkree Bhabee. The sum allotted for the support of Ooday Coour Baboo has been set down under the charge of the Burrah Beebee; it is requisite that this child should remain with Nikkree Bhabee at my house; but the Beebee is mistress. I settle this business myself, my credit being concerned, that she should remain in the house. Keep the child Manick Chund near you, and instruct him, he being an offspring of the master, he is to be under

(*a*) How this sum, whether taken as a balance or a total, is arrived at does not appear: there is probably an error of the copyists in the column of figures. A near approximation is made by taking the 12,800 to be a residue, after specific appropriations out of the 32,000. The editor will endeavour to publish the Nagree will, with a critical explanation: Note XI.

Ooday Coour and with her; she will have him married. Should Dukkhinee Roy make any disturbance on this settlement, it is futile. *Hindu Law*

The Beebee is sole mistress. If Dya Chaund acts conformable to her wishes, and makes himself fit for to transact mercantile affairs, she may then place some money in his hands, and let him have the management thereof. If however Dya Chund should act contrary to the lady's will in any respect, let her not pay any money to him, except one hundred rupees monthly, for palenkeen hire, raiment &c., making annually twelve hundred rupees; paying which, all other disbursement, for food and other household expences for the daughter in-law, are under the Beebee's sole management.

(C)

To the high in dignity the Supreme Court and the Governor and Council. The humble representation of Sree Rajah Huzrymull.

As I feel my death approaching I therefore write and leave this paper behind me, and I hope you gentlemen will be pleased to cause all to be put in possession agreeable to this writing. I first state the particulars of the disposal Amirchaund Baboo made of his estate, at the time of his death. The purport is as follows—"I have bequeathed one lack of rupees to Dialchund Baboo, after paying this and other legacies left by me, the remainder of my fortune I bequeath and give to Groo Govind Jee and out of the profits thereof charities are to be made. I leave Huzrymull to act in my stead as principal; and exclusive of the one lack of rupees I have bequeathed to Baboo Dialchund, he is to receive three hundred rupees per month."

The above is the tenor of Ameerchund's writing which is now in the Court.

In the Bengal year 1183, I empowered Dialchund Baboo to transact the business of the said estate, who not only proved unable to recover the outstandings, but squandered away a considerable part of the said estate, besides what he spent over and above his monthly allowance, which induced me to take the management of the said estate out of his hands, and give it to Mr. Levett, and appoint him attorney to the said estate, and have had the business transacted by him. I now declare that Baboo Omichund has bequeathed his estate to Sree Groo Govind, of which estate I was the manager. I now appoint Mr. Levett saheb sole manager and executor to the said estate, who after my death shall act as principal in transacting all the business of the said estate and performing the charities; and

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Modun Mohun Dutt Jah is to assist, and Mr. Levett saheb shall be executor and manager of all the business, the debts, dues, garden houses, jewels and other things whatsoever belonging to my private estate and the estate of Roy Mootichund. When Baboo Heera Sing, the son of Roy Mootichund, attains to his proper age and becomes fit for business, then Mr. Levett shall deliver over to him, the said Heera Sing, the management (which was vested in me) of the business of the estate left to Groo Govindy, as also the estate of Roy Mootichund and my private estate. Finis. Dated 6th Justy 1190.

(D)

Sree Groo Jee Sohaye

BHABANI BEEBEE DYA CHUND

We Bhabany Beebee and Dialchund write as follows. Baboo Ameerchund in his own handwriting had bequeathed to us one lack rupees from his estate which we have received from Baboo Huzrymulljee in money and goods in full. We have no other claim against the estate. Finis. Seealdah 1816 Poos Buddee Suptomy.

Answers of the Pundits.

1. The papers marked B will have effect according to the full tenor of them, for these papers. as stated in the above case, are valid according to the Dherem Shaster.

2. Although Dialchund were the heir (*a*) and had become of age, under the papers marked B according to what is therein written, Huzzrymull had a right to the management of the property therein mentioned, during his life, by virtue of the four papers marked B.

3. The answer to this query has already been conveyed in that given to the second, nevertheless we here write,

(*a*) *oottoor adhikari* (the word used) signifies, heir in succession *Mr. Blaquiere's note.*

that Huzzrymull had a right, by virtue of the papers marked B. to make such a disposition of the management of the said property as that contained in the paper marked C. *Hindu Law*

4. According to the Dharem Shaster, Huzzrymull's Will marked C is not valid. The said paper can have no effect whatever in conferring on Hira Sing the management of the property bestowed by Omirchaund in charity. How can that which is itself invalid convey any power to another? This is the decision of the Dharem Shaster.

It appears, from the deposition of the record-keeper, taken 25th Oct. 1792, on behalf of the lessor of the plaintiff, that probate of the four papers B, as the will of Omichund, was granted by the Mayor's Court to Huzzrymull in August 1771, upon evidence of their being holographs of the testator. They were produced on this trial by the registrar, from the equity side of the Court (*a*).

The further question put by the Court was:

To whom would the management of Omirchaund's property go and belong according to the operation of the

(*a*) having been filed upon the motion for injunction 25th June 1792: supra note (*a*) p. 319. It is clear, that the Supreme Court did not consider that probate as conclusive of the testamentary character or validity of the instrument. The two Wills, of Omichund and Huzzrymull, were ordered to be delivered by the record-keeper to the examiner, upon a fac-simile being deposited, 2d Dec. 1789, on the petition of Sree Cowar in her suit against Rajah Dialchund: and, under orders of 21st and 22nd June 1792, in the subsequent suit, Omichund's Will was delivered by the examiner to Mr. Blaquiere for translation "and that Moolchund Moonshee may be allowed to read the Nagree writing."

Sree Cowar's bill was filed July 9, 1788, as the widow of Huzzrymull's son, on her own behalf and also for her infant son (the lessor of plaintiff), and prayed an account of all the property come to Dialchund. She derived her son's title under his grandfather's will and also by inheritance. Dialchund, by his answer (which was

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papers B, ascertained by the Hindoo law, after the death of Huzzrymull, supposing Huzzrymull to have died without making any disposition of Omirchaund's property, or of the management thereof, and supposing Dialchaund (since deceased) to have survived Huzzrymull, and supposing Huzzrymull to have left two sons by two different women, to neither of whom he was ever married?

Answer. According to the operation of the paper marked B, ascertained by the Dharem Shaster, this answer is written.—Of the estate given by Omirchaund to Guru Gobind, Guru Gobind alone is the proprietor. For the purpose of receiving, paying, and preserving &c. the same, Omirchaund appointed the deceased Huzurimull his representative. If issue by marriage be wanting, the management will go to children by a concubine. This is our opinion.

The questions subsequently put, for explanation of the last answer, were:

1. Whether what is said in their answer to the question respecting the operation of the papers marked B is a construction of law, or only a construction of the terms used in the said papers?

2. Whether they are of opinion, that Huzzooreemull

read for defendant on this trial) denies that Moteechund, the father of the infant plaintiff, had any heritable blood, and claims himself as the adopted son of Omichund, also as heir to Huzzrymull: he states his belief that, under some Will of Omichund, Huzzrymull was appointed his guardian, and relates the professed delivery to him of Omichund's estate by Huzzrymull and the execution of the instrument K set out in the above report: he states that Huzzrymull afterwards fraudulently set up certain loose papers as the Will of Omichund, under which he (Dialchund) had only a specific sum left to him; but he insists that such Will, if genuine and valid, could not affect his right to succeed to Huzzrymull. The suit did not proceed further than the examiner's office.

was the representative for life only, or whether his heirs also were to be representatives of Omirchaund? *Hindu Law*

3. That they be required to name the persons to whom the management would go on Huzzooreemull's death—whether to the sons of Huzzooreemull or to Dialchund?

No further answers or expositions by the Pundits have been found.

At the end of July the cause was again proceeded with. Several exhibits were read for defendant, of which one is material to be noticed, viz.

exhibit K ৪

কল্যানবর শ্রীযুক্ত দয়াচন্দ্র বাবু বরাবরেষু।
লিখিতং শ্রী রাজা হজরি মলুখ পত্রমিদং কায্যনঞ্চ আগে ৺ বৈকুণ্ঠ বাসি বাবু আমি চন্দজীর দৌলতের মোক্তার তুমি হইলে আমার নামে খত দিয়া জে২ টাকা কর্জ্জ লইয়াছো ইহাতে টাকা দিয়া জে আশামি খত খালাষ করে তাহা তুমি আপন নামে রসিদ দিয়া টাকা লইবে টাকা না দিয়া তোমাকে রাজী রাখিয়া নয়া খত যে দিতে চাহে তাহা তুমি আপন নামে খত করিয়া লইবে আর আমি আপন নামে খত লিখিয়া দিয়া টাকা কর্জ্জ লইয়া কাগজে জমা করিয়া দিয়াছি সে টাকা তোমার দেনা হইল জাহাকে টাকা দিতে হয় টাকা দিয়া খত খালাষ করিয়া লইবে জাহাকে খত দিতে হয় আমার নামের খত খালাষ করিয়া লইয়া আপন নামে খত লিখিয়া দিবে হিসাবি দেনা পাওনা কাগজ মাফিক দেনা তুমি দিবে পাওনা তুমি লইবে আর বাটীর পাট্টা জে২ নামে আছে সে সকল জমীর পাট্টা তোমাকে দিলাম মোক্তার তুমি (obliterated) করিয়া লইবে আমার এ লিখন হাকিম ও পব্লীকে জাহির করিবে এহারা মঞ্জুর করিবেন ইতি সন ১১৮২ শাল তাং ৬ চৈত্র

ইশাদি। (*b*)
শ্রী রামজয় শর্ম্মণ

(*a*) Nagree signature. (*b*) This attestation is on the back.

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(translation of the above) (*a*)

The most blessed Hory

RAJAH HAZOORY MALL

To the most graceful Dyah Chund Baboo success and happiness attend you

I Sree Rajah Hazoory Mall-oshio do write this paper for the purposes as follows: As you are now become the owner of the estate

(*a*) This does not appear to have been the translation put in at the trial (exhibit 52), which is not forthcoming; it is one of two translations annexed (together with exhibit K) to the answer of Dyalchund (p. 333, no. *(a)*): it bears no official signature, but is selected because evidently most in accordance with the one used at the trial. The Chief Justice has this note upon Mr. Shaw's argument as to the effect of exhibit K.—N. B. It does not appear to be a vakalutnameh, it begins *you are the manager or owner* not *you are the manager*.

The other translation (which is partly obliterated) is by Mr. Blaquiere, viz.

Sree Sree Hurryjee

To Sreejut Dyachond Baboo,
with benedictions.

RAJA HUZZOOREE MULL

I Sri Raja Huzzooree Mull execute this writing,

You have become manager of the estate of the late Baboo Ameechund Jee. When the persons who have borrowed money, giving bonds in my name, pay the amount and redeem the bonds, you will give receipts in your own name and receive the amount.

Where, instead of paying the money, they satisfy you and offer fresh bonds, you will take the fresh bonds in your own name.

of the blessed Baboo Aumar Chund Jee deceased, therefore whatever persons have borrowed any money by giving their bonds in my name, should any of them come to redeem their bonds by paying the money, you are to receive the same by giving receipts in your own name. But should any of them come to renew their bonds and you consent to it, in such case you are to take the new bonds in your own name. Further, I have also borrowed money by giving bonds in my own name, which are brought to the credit in the accounts and which are consequently now become due from you: should you go to pay to any one you are to do it by redeeming my bonds. But should you go to renew any of those bonds, in such case you are to give the new bond in your own name and get my bond cancelled. With respect to the book-debts; whatever is due to any one, this you are to pay, and whatever is due from any one, this you are to receive, all conformably to the books. Further, having delivered to you all the pottahs of the houses and grounds in the different names, you are the owner of them, whenever you find necessary to get any of the pottahs renewed or made out in your own name you are to do it. You are to make this my writing known to the rulers and justices, as well as to the public, who shall confirm the same. Finis. The year 1182, dated the 6th of Choitre, Nagree date, Saturday, the 11th day of the moon of the month of Choitre.

(Witness)

Nemoy Bose, the writer of K, deposed:

I knew Buddinaut Jemadar. I know that Huzzrymull made a demand against him, in the year 1171 or 1172, for a debt due to the estate of Omichund, for which his house was mortgaged. The bond was payable to Omichund; it was made during Omichund's life. I was present when Huzzrymull, Kerparam, Gooroo Shah Baboo, and Bissen Daas Baboo were conversing about a will, saying

It is incumbent on you to pay the money which I have borrowed and carried to credit in the accounts giving bonds in my own name: you will pay the amount to those to whom it is due and redeem the bonds, and give bonds in your own name to those to whom fresh bonds are to be given, and redeem the bonds which are in my name. You will pay what appears by accounts to be owed and will receive the sums due.

I have delivered all the pottahs of houses, in whatever names they stand, you are the manager, when ..... you will ..... you will obtain.

You will publish this my writing before the magistrates and the public, and they will approve it. The year 1182, dated 6th Choitter, Saturday the 11th dark side of the moon, in the Choit, the year of the Sumbat 1832.

(Witness)

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they ought to produce the will before the Court. Huzzrymull observed,—if I was to produce the will before the Court, the cause would be nonsuited, because the will mentions Dialchund to be the master, and the cause is brought in my name. There was a bundle of papers lying, out of which he took four pieces of rough paper, and gave them to Bissen Daas to read: they were written in the Nagree character. I being at a little distance heard some parts of them. After the papers were read, Bissen Daas Baboo, Gooroo Shah Baboo and Kerparam advised Huzzrymull to deliver them into the Court. I did not understand why they advised him to produce those papers. I did not hear the name of the person whose will it was. After they came down stairs, I asked Kerparam about the conversation. I now believe that it was Omichund's will. Kerparam was employed by Huzzrymull in the management of the estate. Kerparam is dead, so are Gooroo Shah, Bissen Daas, and Huzzrymull. I was under Kerparam: I was like a naib to Kerparam, therefore I happened to be present at the conversation.

In the month of Cartic or Augran 1180, Huzzrymull intended to give over all the business to Dialchund; I mean the management of all Omichund's estate, all the payments and receipts of money, jewels, houses, lands, bonds, mercantile business, cloth business, gold and silver, precious stones, in short the management of all the property; upon which occasion he desired us to make out inventories of all those articles I have mentioned, and give a statement of all the property. I and a mohurrir, named Nundoo Bose, prepared this list (R), which comes up to 15th Maug 1180. Nundoo Bose is dead. When this list was made out, I read it to Huzzrymull; he desired me to make a copy, and said he would sign this list and would get the copy signed by Dialchund. Accordingly, the copy was prepared in three or four days. Huzzrymull sent for Dialchund, and in his presence signed this list, and wrote upon different parts of it. Afterwards, Huzzrymull delivered this list to Kerparam, and told him to get a copy signed by Dialchund and bring it, leaving this list with Dialchund. This was, I believe, because Dialchund was the heir of Omichund. I have heard he was the adopted son of Omichund. After Dialchund had signed the copy, and Kerparam had delivered it to Huzzrymull, Huzzrymull told me to account for all the things in this list to Dialchund. I went accordingly, and Dialchund took possession of the things: he sold some of them, and bought others. I mean, he sold all the cloths and such articles. Huzzrymull retained the bonds and pottahs of the houses mentioned in the list: he also retained some of the gold ornaments set with

stones. Dialchund often desired me to go to Huzzrymull for those things; he always put me off. All the houses were delivered into the possession of Dialchund, and amongst them was also delivered to him the house in question in this cause. Dialchund used to make out receipts and receive the rents. All the houses excepting one or two in the list were delivered to him. Before then, Dialchund lived in a house adjoining Omd's; but he used to come every day to the house wherein Omd. and Hll. lived. The one house which Dd. did not take possession of, at the time of the list, was a house where Hll. had some goods, in the Burrah Bazar. I knew Mootychund, the son of Hll.; he used to live in a house opposite to Omd's. That house was also part of Omd's property. Mootychund continued to live there after Dd. got possession of the houses. Half of that house is mentioned in the list, which half Dd. got possession of, but not of the other half where Md. lived. Hll. requested Dd. to give him a place to live in: he therefore gave him the other half to live in. The whole of Omd.'s property, to the year 1180, was mentioned in the list, except that half of the ground which Dd. gave to Hll. (*a*)

Kerparam desired Dd. to give Hll. a receipt for all the articles in the list: he took the receipt to Hll., and then desired Dd. to come to Km's house the next day, to meet Hll. I went with Dd. to Km's house; and Hll. there delivered all the pottahs and other papers in the list, except a few English bonds and pottahs which were not found in the box. This was the 1st or 2nd Choit 1182. After the receipt was delivered to Km. by Dd., Km. was taken ill, and therefore the business was not completed until the 1st Choit following. Two or three days after the delivery of the bonds and papers, Hll. delivered to me the jewels in the list; I gave them to Dd.

Either the next day or the day after, when I was with Dd., he took out a paper and gave it me to read. To that paper was affixed Hll.'s signature. After I had read it, Dd. was much displeased. He

(*a*) Dialchund, in his answer to Sree Cowar's bill, says, "— the estate of the said Omd. Baboo intrusted to the said rajah Hll. during the minority of this deft. — did amount to at the least 100 lacks of Rs. consisting of houses lands money securities jewels goods &c.—a great part of which has been embezzled and made away with by the said rajah Hll. who at the time he delivered over the estate to this deft. acknowledged the same did amount to the value of 44 lacks of Rs."

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sent Buddinaut Mustaphee to Km. Ghose with the paper, to tell him that it was not according to the terms agreed on between Dd. and Hll.

I know exhibit K now produced to me. I wrote it, by desire of Km. Ghose, because Buddinaut had carried the message. This was at Km.'s house: both Hll. and Dd. were there. There was also the other paper which Dd. had objected to, as well the paper from Hll. to Dd. as the paper which Dd. had given in exchange. Hll. said to Km.,—do you write a proper paper. Km. dictated to me, and I wrote this exhibit K: Hll. heard Km. dictating to me. When tne paper was written, Hll. put his signature. Km. observed,—the paper must be witnessed, the former one was witnessed by Ramjoy Sarmono, and this must also be witnessed by him, and you must put the same date. Ramjoy Surmono and Ramjoy Takoor is the same person. At that meeting Km. said to Dd.,—the five bonds which Hll. kept in his hands and had not delivered to you, the amount of them has been received by Hll., and which amount he has partly laid out on account of the charity and part towards paying the debts of Omd., and a part he has expended on his own account. Km. desired me on that occasion to allow those sums in the account, and added,—Hll. is the maternal uncle of Dd., besides, he is an old man and has been his patron, and has had the trouble of bringing him up; if he should hereafter expend any money belonging to the estate, Dd. must not allow it. Dd. agreed. Km. directed Buddinaut to take the papers to Ramjoy Takoor, to shew him the cancelled papers and desire him to become a witness to this one: he desired Hll. and Dd. to go also. Accordingly they went.—

Dd. desired me to read for him, because he did not understand to read the Bengallee language, and I was under him and did the business. When I was in Hll.'s service, I used to keep the accounts: I transacted all the business after Km. was taken ill. After the delivery of the estate to Dd., Hll. delivered to me an account of about three lacs Rs. of the estate, which had been collected and expended by him, and desired me to admit it in the estate books. I objected to do so without Dd.'s permission; I mentioned it to Dd., who forbade me. When I told Hll. he said,—never mind, take the account on a separate paper, and I will get it approved. I have already stated, that Dd., at the time of the execution of the paper K, afterwards, allowed that sum in the accounts, at the instance of Km.

On the death of Omd., I dont know who performed the sraddh. I was not then in the service; but when Dd. distributed the bhaut, brass plates, cots and other things to the bramins I was present, at the house of Ramtono: that was part of the ceremony of sraddh.

Hll. attended there: he furnished and arranged the things properly, to be given away by Dd. *Hindu Law*

After Dd. got charge of the estate, a purwanneh of raja was procured for him, from the king of Delhi; and that was approved of by the Governor General and Council, who, in consequence, gave him a khilaut or dress of honor.

I did not see in the accounts a lac of Rs. paid at any one time to Dd., but I have seen money, goods, cloth, &c. debited to Dd. at different times. I have also seen Hll. stood debited in the accounts for money, goods, &c. I know of no entry of a lac paid at any one time. If any such sum had been given by Omd., it would have appeared in the accounts. Part of the accounts of Omd. still remain in his office, and the remainder in a room upstairs, an inner apartment. There are padlocks to the door: they were under the key of Dd. in his lifetime; and, at his death, Heera Sing affixed his lock and key to the door.—

The receipt given by Dd. to Km. for Hll. was dated the 30th Shraban 1182, and was delivered to Hll. in the month of Choit following, after all the bonds and pottahs were given over to Dd. After Dd. had got possession, he continued to receive the rents until the day of his death. Hll. continued to reside in Calcutta for six years after the things were delivered to Dd. When he and Dd. went together to Lucknow, Hll. was away from here nine or ten months: he went in 1186, and returned in 1187. He continued in Calcutta till his death.—

At the time the property was delivered over to Dd., in 1180, I was told by Hll.,—Now, Rajah Dd. is the master of the business, go and attend on him, and do what he shall direct you. From that time until Dd.'s death, I used to manage the business for him, by his orders, and Hll. did not in any manner meddle in the management. But Hll. did a trick, when they were going to Lucknow. The box which contained the pottahs and bonds and papers of the estate was left in my charge, amongst which were the bonds and mortgage papers of Bustom Doss Seat's houses that had been mortgaged to Omichund. (*a*) I heard that two or three of Bustom Doss's houses were advertised for sale; and as I knew they were mortgaged to the estate, I gave notice of it to Mr. Johnson the attorney, also to Mootychund.

(*a*) Bolakee Sing endeavoured to enforce this mortgage by bill of foreclosure. An issue was directed to try the validity of the mortgage, which was retried on account, apparently, of the rejection of explanatory evidence: the first finding supported, the second (it is presumed, for no record of this finding remains,) rejected the mortgage. The decree on further directions and the equity

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Hll. and Dd. had two or three causes pending in the Court: they desired Mr. Johnson to receive instructions from Mootychund. [Witness describes a joint letter being written to Mr J., giving authority to Md., which was reluctantly signed by Dd.]. Mr. J told me to produce the bonds, and he would stop the sale. I told him they were in a box sealed up, which was under my care, but Dd. had the key with him. [Witness describes his being prevailed on to permit the box to be forced, the papers abstracted, and a new lock put on: the box was forcibly detained by Md., witness keeping the key.] Upon the arrival of Hll. here, he took the box, the key continued with me. A short time after, Dd. arrived. Before then, Hll. desired me to take out some pottahs, that he might mortgage them to pay Dd's. debts. I delivered the papers to him, keeping an account of them. Hll. appointed Mr. Levett his attorney to collect the amount of the bonds, and desired me to take them out of the box. He gave them to Mr. Levett. Dd. reproached me, and sent me to Hll. for the box. I went frequently for it: Hll. always promised to deli-

reserved (March 30, 1801) dismissed the bill with costs. The mortgage appears to have been a device to protect property of Bustom Doss Seat from creditors, and not a real transaction. The Seats swear in their answers, that their ancestor Bustom Doss Seat and his brother Monickchund Seat were of high repute and of great fortunes which they acquired by a most extensive traffic and commerce—that they believe Omichund was in the service first of Bustom Doss Seat himself and after in the service of his family and acquired much property thereby and was entrusted with the managemeut of their extensive concerns and money transactions. They speak of Omichund as "a person of strong understanding and very conversant with business." These Seats were an undivided family: their pedigree (as stated and admitted on these pleadings) was:

Bustom (or Boishnub) Doss — Monickchund
d. A. X. 1752 — *d. A. X.* 1744
Nemoychurn — Gowerchund *d. A. X.* 1764 — *d. A. X.* 1782 left a widow, Rammoney Syttany.
Petumber *d. A. X.* 1792
Gopeenaut — Roopchund

But see the case *Nursingchund Seat* v. *Kistnomohun Seat*, 2 Morley 125. Sir Robert Chambers has notes of motion for injunction in the foreclosure suit, (viz. *Bolakee Sing nephew heir legal personal representative and sole devisee and legatee under the last will of Rajah Dialchund deceased* v. *Gopeenaut Seat and others*) in November 1794 and of the first trial of the issue in March and June 1795.

ver it, but never did. After the death of Hll., the box was in the tosha-khaneh. Dd. sent Sunker Bose to Hll. to tell him, that unless he instantly delivered up the box and papers, he would complain, and added, that he found Hll. was then selling houses &c. of the estate. Hll. asked Cossinaut to persuade Dd. not to complain, and said that his selling houses was to pay Dd.'s debts, for which he had joined in bonds with Dd. Except in the instances and in the manner I have mentioned, Hll. did not iu any way interfere in the management of the business of the estate of Omd. after it had been delivered over to Dd.—Before Dd. arrived, I used to get the rent bills signed by Hll., who sometimes signed his own name alone and sometimes his own and Dd.'s jointly. If I ever did any business of the estate, after Dd. coming here, by order of Hll., it was not without acquainting Dd. of it.—Upon the death of Hll. Dd. did not put a lock upon his duftur-khanah, but he did so upon his toshah-khanah and his godowns. Heera Sing was then a child, about ten or twelve years old.

When Dd. and Hll. were going with General Coote, they borrowed the money I spoke of, in the year 1186, to defray their travelling charges and those of the general. They were both banians to the general. It was borrowed from different persons, Durponarain Takoor, Ramkissen Mullick, Cossinaut Baboo, Ramjoy Takoor and others. It was about 65 or 70,000Rs. They both went with the general as banians.—

The reason why Dd. would not sign the paper was; as the houses were the estate of Omd. and the money had been borrowed by Hll. and himself, he was unwilling that the houses belonging to Omd.'s estate should be sold to pay their joint debts.

Mr. George Williamson, another of defendant's witnesses, deposed: (*a*)

I knew Omichund Baboo very well, also a man of the name of Huzzrymull: I also knew Dialchund. Omichund Baboo died in the year 1758, on the 5th December. It was announced by his executors, of whom Hll was one, to the Board, in my presence. I was then

(*a*) The case submitted to the Pundits has been treated as conclusive of the facts and evidence then before the Court. The depositions of Nemoy Bose and Williamson were after the resumption of the cause. Extracts however from the evidence of witnesses examined in or before August 1792 are subjoined, as further expla-

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acting as secretary. They desired the Board to take the affairs of Omichund under their direction; that is my reason for saying they were executors. Col. Clive was at that time governor of this settlement.

Hll. came to me, hearing I was about to dismiss my banian, and desired I would employ him; he introduced Dialchund and Mohunpersaud, saying that they would be the ostensible persons, but that he himself would transact my business. Mohunpersaud was a merchant here. I have heard Hll. repeatedly declare that Dd. was

natory of the circumstances of this case, which has somewhat of historical interest.

Ramdullol Metre (the witness to the writing of the will):

I was in Omichund's service at the time of his death and had been so for about 20 years before then. I kept the daily roker book. —Omichund had no issue; whilst he was living, he took one Amichund, the eldest brother of Dialchund, as his adopted son, and he died before Omichund.—On the death of Omichund, I went into the service of rajah Huzzrymull, and continued in it till he died. I have been in Heera Sing's service since the death of Huzzrymull: I keep his account of house expenses. Omichund was a very great man, and worth a great fortune. There was nobody present when I saw Omichund write the Will, B, but myself and Omichund: and nobody else was present when he had the conversation with me about his Will. He did not write all the paper B, in one day; I saw him writing it two or three days: he was in a room on the east side of the hall when I saw him writing: he used to read the *Grunthŭ* [*The Book*—the Seik Scriptures] in the hall: he had a very large house, and a great number of servants.—Kerparam was 5 or 7 years in the service of Omd. before his death, as head gomastah, whom I call dewan.—I kept the Bengally cash book, and gave it to the other writers, who used to post it into the journal and ledger. All the books but the cash book were kept in Bengally. I could read Nagree, that writing which was written by the cash keeper, as it was very legible, and I used to write it out in Bengally. When Omd. was living, the whole of his business was entrusted to Hll., and he was Omd.'s confidential person: Hll. was in the service of Omd., he was the malik; the master of all the business, he had no fixed salary, he took what he pleased for his own expenses. I do not know when Hll. first entered into Omd.'s service.—I have said that Omd. adopted the eldest brother of rajah Dialchund: I never heard that, on that brother's death,

the adopted son and heir of Omd. I was present when Hll. accompanied by Dd. paid Mr. Vausittart, the governor, a visit, on his arrival in 1760; when Hll. introduced Dd. as the son and heir of Omd. In the latter end of March, Hll. came to Mr. Vansittart, whilst I was with him, and told him that Omd. by his will had left a certain sum of money for two charities in England, and begged to know what two charities he, Mr. Vant. would particularly recommend. Mr. Vant. recommended the Magdalen and Foundling hospitals, Hll. acquiesced; and he, the next day, gave into my hands, as secretary, a letter, in consequence of which an order to the committee of treasury was made out for them to receive that sum from Hll.—

Omd. adopted Dd. Amichund, the adopted brother of Dd. died when the latter was about 15 years of age. I never heard from rajah Hll. that Omd. had adopted Dd.: I dont see why Omd. should have adopted Dd., having before adopted his brother. In the year 1163 Calcutta was captured by the Nawaub, and we all ran away: Omd. was then in confinement in the Fort. I was not present on the very day that Omd. adopted Amichund, but I was present on subsequent ceremonies attendant on his adoption, such as boring the ears &c. Dd. distributed the *daunuchuk* or alms on the death of Omd. I was not present at the sraddh of Omd. I dont know whether or not the Seiks practise the ceremony of the *pindedaun*.—It does not follow that the person who is to set fire to the pile is to be the person who is to get the estate. If the person dying had left the whole of his estate to the heir, who afterwards performs the *pindedaun*, that person is entitled to it; but should he have disposed of his estate to any others, then the person who performs the *pindedaun* may be one who does not get the estate; and Dd. being the son of Bowannee Bebee who was the daughter of Omd.'s brother, he therefore set fire to the pile, as there was no other nearer relation present.—Omd. mentioned nothing more about the charities than that the residue of his estate after paying the legacies should go to the worship of Sree Sree Gooroo Govind: he mentioned no particular charities: what he gave by his Will to his family and servants was a free gift and in the nature of a charity. Why should Omd. leave me any thing in that way? He did not leave me any legacy in his Will.—I dont know what Omd. did with the paper after the conversation I had with him respecting it. I never saw it afterwards till I saw it in the hands of Hll. on the day after Omd's body was burnt. I had no conversation with Omd, on the subject of his Will, except on

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I have seen Omd. and Dd. together. The first time I saw them was at Mr. Drake's, the then governor. I dld not then know who either of them were. Omd. was leading Dd. by the hand into the Council room; which must have been just after Omd's return from the city, after the recapture of Calcutta, by his going up and embracing each of the members of Council, amongst whom Col. Clive was then sitting, as commander of the army. Omd. then introduced Dd. to each of them. Omd. afterwards brought up Dd. to me, and said, *polākee beyta,* which I did not then understand. I have since always understood that term implies an adopted son.

the last day I saw him writing: on the former occasions I said nothing to him about the Will, I went to him on business and had conversation respecting such business, but dont now recollect what passed between us. I did not take the paper into my own hands to read it, nor did he give it me to read it. I supposed it to be a Will because I read a name there, and afterwards he told me it was a Will. How should I know why he did not sign his name to that Will? This seal was not to the papers when I saw them in the hands of Hll. I dont know whether or not they were fastened together. Every great man has seals, and Omd. had such, but I never saw him seal any paper. I dont recollect ever having seen any paper with the impression of Omd.'s seal on it.

I was present when Harroo Ghose brought the instructions and the Will, C, to Hll., and read C to him. I think there was no stranger present. In the evening, Baboo Cossinauth and Dd. were sitting in a verandah to the south of the hall, which was between the room where we were and the verandah. I think they could not hear what passed in the room. Cossinauth was not a Seik, he was of the Ketree cast. After the death of Hll. Cossinauth pretended to be a friend of Dd. and made him set up to be the heir of the estate, in order to get the whole of it into his own hands; every one knows this, it is very public. I did not hear it from Heera Sing only, but from several others.—

Whether Dd. received the money or not will appear in the account books; but Dd. said to Bissen Daas,—Do you write the receipt, I have received one lac Rs. in money and goods. Whether or not this was ever paid I do not know.—

Heera Sing being very young at the death of Hll., Dd. by force performed the funeral ceremony. I understand, according to the Seiks' custom any distant relation may perform the sraddh. Nobody did oppose it to my knowledge. Dd. sealed up and took

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From the time of my arrival in Bengal, which was in 1756, to 1763 I resided in Calcutta. I was then at Cossimbazar till 1769, and afterwards in Calcutta until I embarked for Europe in 1771. I returned in 1775, and have ever since remained in Bengal.

Hll. became my banian, and continued to be so from the early part of 1759 to the end of 1763. I frequently applied to Hll. for money

possession of all the effects and estate. I did not see the body of Hll. burnt: when Dd. had performed every thing for the pile I left the house: I did not go to the river side. Heera Sing is about 16 years old, a little more or less. Dd. might have performed the sraddh of Ooday Cowar, but I did not see him do it.

Roopchund Roy, a witness for the defendant:

I knew Omd. Baboo for about 6, 7 or 8 years before his death. I was in his service: I first entered into his service as a duftree, and afterwards I was a sircar in the service of Dd. I remember at the death of Omd. Dd. performed his sraddh. I know this because I was in company with Dd. when he went to the house of Ramtono Roy to perform the sraddh, and I was also with him when he performed the *pindedaun* in a house on the bank of the river: that house belonged to the estate of Omd. Dd. was the person who lighted up the pile to burn the body of Omd., I was present, and Hll. accompanied him. At the time of the *pindedaun* Hll. was also present. Dd. was at that time about 10 or 11 years of age, I speak by guess; a brahmin was instructing Dd. how to perform the ceremony. Dd. performed the *pindedaun* of his own accord, not by the direction and orders of any person. There were many rich persons present, amongst whom was Kerparam Ghose, and they were all of opinion with Kerparam that Dd. had a right to perform the sraddh. Hll. was present at that consultation. I was present at the sraddh of Hll. it was performed by Dd., and he lighted the pile and performed the *pindedaun*.—The sraddh is performed in the morning, and is began upon about a *puhur* or a *puhur* and a half after sunrise; and the *pindedaun* is performed in the evening. The meaning of the sraddh is, a present made to the brahmins, such as cloths, silver or brass pots and plates, doll, rice and such things. The *pindedaun* means, that a pot full of rice is boiled, and the person performing takes up a handful of the rice from time to time and lays it on the grass, whilst the brahmins repeat certain words; after which the rice is taken up and thrown into the river by any one who

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and passed bonds to him. Sometimes he lent me in his own name; at others he said, he had no money of his own but desired me to ask Dd. and if he gave his consent I should receive the money from the estate of Omichund. I think when I received money under applications to Dd., the bonds I gave were made payable to Dd. or to the estate of Omd. I do not exactly recollect. I have heard Hll. say

pleases, there is no ceremony about this. Omd. died in the month of Augran in the Bengal year 1165. On the first day of that year they began a new set of papers in Omd.'s dufturkhaneh, after which Omd. took Dd. upstairs into the *sungut* or worship-room, and presented Dd. there and said he was the master of his fortune. There were entries made in the books on that day, and the first was made by Omd., and afterwards another by Dd. This book now shown to me is the roker or daily cash account book. The two lines at the head and marked H is the entry made by Omd. I saw Omd. write this entry. The words at the head of the page are *Sree Jee Sohay* meaning, Sree Jee ever be in my mind. Sree Jee is the name of an idol. The words following written by him are in English, *Sumbut year* 1815 *on the 9th day of the increase of moon, month of Bysack, dated Sunday 6th Bysack.* Then follows, *Credit on account of Sree Jee being a lucky day Sa. Rs.* 101. This is all that is here of Omd.'s writing. There were a great many people present, Gooroo Lal Baboo the cashkeeper was one, he is dead. The rest of the entries in the book were made by Gooroo Lal. This other entry (I) was made by Dd. No person of higher rank than the gomastahs was present. The entry marked I is, *Omeer Sing's credit Sa. Rs.* 101. *Sookdeb Mullick's credit Sa. Rs.* 51. The remainder was made by Gooroo Shah. The person who is the master of all the business makes generally the first entry. Omd. desired Dd. to make the entry marked I; after which Omd. took him to the worship room. By 'master of his fortune' I mean, Dd. became master of the fortune from the time of making the entry marked I. During Omd.'s life Omd. was to have the possession of the fortune and after his death Dd. was to get the fortune. Omd. died about 8 months after the entries were made in the book. I dont know of any instance of this kind having happened in any Hindu family. I never heard of any such instance. Hll. was present when the entries H and I were made, and he knew the purport of that ceremony. The book marked G in which the entries were made has continued in my care: it was in the duftur khaneh, in one of the houses of Omd. on the bank of

that Omd. had appointed him by his will guardian to Dd. Omd's fortune was deemed to be very great at the time of his death. I never heard Hll. say anything about the amount of Dd's. property; if he did, it was in a cursory conversation. It must have been very considerable, otherwise the executors would not have applied to the Board to take charge of Omd.'s estate; because his debts were

the river. I was in the service of Hll. I entered into it after the death of Omd. I quitted Hll.'s service in the month of Maug 1180 and entered into that of Dd. Hll. told me as well as the other servants that we must go and receive our orders from Dd. who was then the master of the fortune, the whole estate of Omd. Dd. died in one of the houses of Omd. on the bank of the river; he was there only three days including the day of his death. Before that, he lived in Omd.'s family house. Dd. was born in the dwelling house of Omd. and continued to live there all along, and when he grew up he built a bungalow on an outer apartment of the dwelling house, where he used to live. The house where he lived is the house in dispute in this action. Since the death of Dd., I have been and now am in the service of Bolakee Sing the defendant. I know Ramnarain Misseree. Bolakee Sing is young, and Ramnarain acts as his guardian and pays me my wages: he pays me Rs. 6 per month. Ramnarain Misseree, Budinaut Mustafee, Nemoye Bose and Jetram Tagore manage all the affairs of Bolakee Sing: he is learning to write; they teach him business. Every one of them has charge of this cause, also Bolakee himself.—Hll. and Dd. did perform the *pindedaun:* they were of the Kettre cast. Since the death of Omd. the book G was always in my possession, but lately Dd. Baboo took it from me, that is, a year or two before his death. During the time exhibit G was in my possession, it was kept in the dufter khaneh, and every body had access to it. Ramduloll Mitre, who was examined here, translaed the book into Bengally.—I never saw the book G since Dd. took it from me till this day. I am sure I do know the handwriting of Omd. Exhibit B is his handwriting: I have looked at all the four leaves of it, and they are all of Omd's handwriting. —There are Seiks who are of the Kettree cast. Heera Sing set fire to the pile of Dd. by force. Buddinaut and others brought sepoys there (from Mr. Motte) to prevent him. They could not prevent him, because the pile was all ready, and he instantly set fire to it. Heera Sing had a great number of Seiks there; and all the Seiks who had been under Dd. joined Heera Sing on Dd.'s death. The brahmins

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outstanding. I have heard Hll. say, that the fortune which Dd. had was Omd.'s. When the executors made application to the Board, they did not say for whose benefit they wished them to take charge of the estate. I always understood from Omd. himself, that he intended leaving the whole of his fortune to Dd.

This is a book of consultations which contain the proceedings of the Governor and Council at the times therein mentioned. I see an entry (exhibit 40) written by myself: it was made upon the application which I have mentioned of the executors of Omd.—

Omd. only resided a short time in Calcutta after the retaking of it. I was intimate with him. Omd. married some relation of Hll. Hll. and two others who were confidential servants of Omd. (whose names I dont recollect, but I believe one of them to be Kerparam) were employed by him in all his dealings in Calcutta. He traded with all the merchants here. I dont recollect ever having seen the will of Omd. I dont recollect any thing about a contest between Hll. and a debtor of Omd.'s estate. If it occurred, it must have been whilst I was absent from Calcutta.—I dare say I saw Rajah Dd. very soon after my return from Europe. He complained to me that he could not get his affairs out of the hands of Hll. Hll. was then in possession of Omd.'s fortune: I dont know how long he continued in possession of it. I dont recollect when Hll. died. I understood there were disputes as to the estate between Dd. and Hll., but no personal disputes that I knew of: they always appeared to be upon good terms.

I am not able to answer whether there was a will of Omd. brought forward to be proved in the Mayor's Court by Hll. I was not a

would not go to Heera Sing's house to perform the sraddh: without brahmins the sraddh can not be performed.—The sraddh of Dd. was performed by the defendant, and only 17 brahmins were there who eat of the offerings and attended the sraddh. Though we offered to the Seiks rice, doll and ghee for three days, yet they would not receive it from us, but went over to Heera Sing and received the rice from him. I dont know why they would not receive our offering, but they consulted together and went to Heera Sing's side.—Hll. wore no string over his shoulder, but Dd. did wear one. Hll. had not business to learn *gotry:* he used to read the *Grunthŭ;* I used to see him read it. I dont know why Hll. did not wear a string. Dd. and Omd. wore them.—Hll. was present in the worship room at the time I spoke of in the course of my deposition.

member of the Mayor's Court, and know nothing about it. I dont recollect Hll. being appointed khazanchee to the Treasury: it is only lately that I have known the nature of his appointment. Rajah Dd. never complained to me that Hll. had brought forward a will of Omd. I had not frequent or many interviews with Rajah Dd. after my return from Europe.— *Hindu Law*

I dont know of what country Omd. was a native: I have heard, but dont recollect. I always understood he was of a high cast. Omd. was not more addicted to the religion of his country than other men, that I heard.

I have already said that Hll. and two others went to the Council Board; one of whom I think was Kerperam: they were people in Omd.'s service whom I had seen before. I know nothing of Omd.'s having made more executors than one except by their being before the Board.—It is very difficult to ascertain the ages of the country people: but at the time Rajah Dd. was introduced by Hll. to Mr. Vansittart, I suppose him to have been about thirteen years of age: he might have been more or less.

Shaw on 2nd August offered a witness in reply, to prove declarations of Dialchund, after Choitre 1182, that he had only been in possession of the management, and that he had given back even that to Huzzrymull.

Burroughs objected, that this was not the case of a latent ambiguity, and that parol evidence could not be given to contradict or in explanation of the writing.

Shaw—These papers are not deeds; they may be defeated many ways, like a promissory note. Exhibit K is no more than a power of attorney to take out pottahs, which the grantor might revoke when he pleased.

The COURT (*a*) rejected the witness.

Several exhibits were read in reply, and

Shaw proposed that questions be put to the Pundits as to the effect of exhibit K, and whether Huzzrymull would be entitled, in consequence of the mismanagement of Dialchund, to resume the management (*b*).

(*a*) Chambers C. J., Hyde, Jones and Dunkin Js.

(*b*) The questions proposed were:—1. Under the operation

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The COURT considered this course unnecessary.

Burroughs on the 3rd August objected to further evidence in reply being gone into.—Heera Sing makes title as heir to Huzzrymull, and relies upon the devise by Omichund to Huzzrymull. The defendant, to shew the title out of Heera Sing, produces exhibit K; he also proves Dialchund to be heir to Omichund. (*a*) I now rely solely upon exhibit K.

Dunkin contra—The powers vested in Dialchund by K are merely to manage the estate. Huzzrymull had no right to give away the estate itself, though he might appoint a deputy to assist him; but if that deputy abused his trust, Huzzrymull might resume the management.

and construction of the four papers marked B, according to the Hindoo law, is the paper marked K, which is admitted to be signed by Huzzrymull, valid—and has it, by the operation and construction of the Hindoo law, any and what effect? 2. If the paper marked K has any effect, would the mismanagement of Dialchund, with respect to the property and estate mentioned in exhibit K, entitle Huzzrymull, according to the Hindoo law, to resume the power over that property and estate, or would such mismanagement defeat the effect of the paper marked K?

(*a*) It appears to have been at least fairly arguable, from the proofs before the Court, that Dialchund was, in the strict sense, adopted by Omichund—if not as a *dattaka*, as a *kritrima* or *krita putra* (v. Sutherland's SYNOPSIS and NOTES). He would in that case be to all intents the heir of Omichund, even assuming that the latter left a widow. Dialchund in his answer to Sree Cowar's bill swears—"he is the grandson of Golaubchund Baboo the brother of the said Omichund Baboo and the father of this defendant's mother which said Golaubchund died many years ago and long before the decease of the said Omichund Baboo without leaving any widow or issue save his this defendant's mother who as well as this defendant's father died leaving this defendant and no other issue long before the decease of the said Omichund Baboo. And this defendant says that he this defendant was adopted by the said Omichund Baboo as his son upon the death of this defendant's father the said Omichund Baboo having no wife or child then living."

The trial being adjourned to Monday the 5th, the note of the Chief Justice on that day is—"Mr. Shaw on the same side with Mr. Jas. Dunkin was to have argued for the lessor of the plaintiff against a nonsuit, but he now declines to offer any further argument on the case: plaintiff nonsuited."

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Nonsuit.

*** The original testator in the above case is evidently the Omichund (*a*) of Anglo-Indian history—that eminent merchant described by Orme, whose treacherous venality was so successfully and unscrupulously overreached by Clive. Orme's account, published in 1778, of the state to which Clive's victim was reduced and in which he died, is strangely inconsistent with the facts judicially proved in this litigation. Professor Wilson has already, upon other evidence, doubted the received story (Mill's Hist. 4th edit. vol. III p. 192, no. 2, in fin.).

DOE DEM. RADHAMONEY DASSI *v.* SRI MUTI DURGA DASSI. (1794)

LALLBEHARI DHUR died possessed of land and houses in the Lall Bazar, Calcutta. He left a widow, the defendant, and a son Choitonchurn Dhur. The son died, childless, leaving the lessor of the plaintiff his widow.

Inheritance. Widow.

The widow of the proprietor succeeds, to the exclusion of his mother, the father's widow; even where the property is inherited. (The two Pundits differing in opinion).

Chambers' notes, April 11, 12, 14, July 11, and Nov. 18, 1794.

(*a*) It is clear from the entry proved by the witness Roopchund Roy (supra p. 348 no.) that the first part of this word is a corruption or alteration of the title or name *Ameer*. The termination *Chund* or *Chand* is common among Hindu merchants. It might have been not unreasonably conjectured that *Omi* stood for the Hindee name *Umā* (i. e. Dūrga), and the familiarity of the latter to Hindu ears may account for the omission of the final *r* of a name of Mahomedan origin when converted into a Hindee compound.

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The defendant sets up a verbal last will of Lallbehari Dhur, which is proved by one witness: two other witnesses tendered are rejected, because they claim to be legatees under the alleged will. In reply, declarations inconsistent with and subsequent to the date of the will by Lallbehari Dhur just before his decease, are proved.

Ledlie for lessor of plaintiff.

Burroughs for defendant.

This action was tried on the 11th 12th and 14th April, before a full Court *(a)*, and was then adjourned, in order to obtain the opinions of the Pundits upon the following Case:

Jaggadutt, a married Hindu, dies, leaving a married son, named Devadutt. The son takes possession of the property. After two years, the son dies, leaving a widow, but no issue. Is the widow of Devadutt entitled to the whole of her husband's property?—Or, is his mother, the widow of Jaggadutt, entitled to any part of it?

The answers of the Pundits were read in Court on the 11th July; but judgment was not then given. On the 18th November, the opinions were again read, and the Pundits personally interrogated by the Court. *(b)*

Opinion of Goverdhun Cowl Surma.

It is thus written in Manu Smriti:—A person who dies, leaving neither son, grandson, or great grandson, that is, leaving no male issue; such person's father inherits his estate; and, should his father be dead, his brothers; should he have no brothers, his mother; should he have no mother, his wife; should he have no wife, his daughters; should he have no daughters, his grand chil-

(*a*) Chambers C. J., Hyde, Jones and Dunkin Js.

(*b*) Sir W. Jones had died on the 27th April, aged 47. *Hyde's notes*, June 16, 1794.

dren by his daughters; and other relatives entitled to inherit, whom I do not here name on account of prolixity. Debadut dies without issue: according to Manu, his estate goes to his mother, and, after her, to his wife (*a*). *Hindu Law*

Yājnavalkya, of Mithilā, says thereon:—A person who dies leaving neither son, grandson, or great grandson, his wife shall inherit his estate; after her, his daughters; after them, the grand children; after them, the father; after the father, the mother; then the brothers; and other relatives entitled to inherit, not here mentioned to prolixity. This quotation from Yājnavalkya is solely applicable to property received by a son, as his share of his father's estate, the division being made by the father during his life time—or, to property acquired by a person, which he leaves at his death—and not to an estate left by a father, possessed by a son after his death, the mother being still living. In the *Dāyatattwa* it is written:—Property acquired by the husband is equally his and his wife's; their right thereto is equal. After the decease of the father, the widow is entitled to an equal share of her husband's estate with the sons.

It is written in Yājnavalkya, in the *Mitāksharā*:—If, after the decease of a father, his sons wish to divide

(*a*) The extract from Menu is not a quotation, but a summary or paraphrase: when questioned by the Court, Goverdhun Cowl read or repeated two of the passages referred to, which were thus translated: *Not brothers, nor the father, grandfather or great grandfather, but sons, grandsons and great grandsons are heirs to the deceased; but of him who leaves no son, grandson or great grandson, the father shall take the inheritance, and the brothers.—Of a son dying childless, the mother shall take the estate, and the mother being also dead, the paternal grandfather shall take the heritage.* These are the 185th and 217th paragraphs of Menu's ninth chapter: in Sir Wm. Jones' translation, the words *nor a wife nor a daughter* are introduced into the first, and in the second *and leaving no widow*—being (as we learn from the preface) the constructions or comments of Culluca Bhatta.

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his estate and live separate, they must give their mother equal proportion thereof.

It is said in Menu: *After the death of the father and the mother, the brothers, being assembled, may divide among themselves the paternal and maternal estate; but they have no power over it, while their parents live.* (*a*)

Thus, according to Menu, the mother of Debadutt is entitled to inherit the estate of Debadutt's father; and, while she is living, the widow of Debadutt has not power to take the same out of her possession and move away therewith or live separately. Menu and others observe, —that, after the decease of the husband, the wife is under the controul of her husband's relations, and it behoves them to see that she comports herself with propriety, and to take care of and maintain her, and should the husband not have left any relations, then the father of the said widow is the person who is to take care of her.

Birmahjee never gave such widows power in the Dharma Shastra; therefore it is proper that women should only have wherewith to support life. This is what is laid down respecting widows by the Maneeshars and in Menu: *Their fathers protect them in their childhood, their husbands protect them in their youth, their sons protect them in age: a woman is never fit for independance.* (*b*)

Should a woman acquire independance, having no relations, she may then do good acts. The widow of Jaggadutt, being the nearest in kin to her husband, is to be looked upon as the proper person for taking care of the patrimony and the widow of Debadutt, and has authority to appropriate the estate in a suitable

(*a*) ch. I. cl. 104. The concluding words *unless the father chuse to distribute it* are omitted. See, on this passage, supra p. 298.

(*b*) ch. 9, par. 3.

manner towards charitable and other beneficient purposes and religious ceremonies, also the performance of the sraddhas of Jaggadutt and his ancestors, and the sraddha of Debadutt, who died without offspring: and if Jaggadutt left daughters, and grand children by them, it behoves this said widow to maintain and have them married. This said widow of Jaggadutt is to manage all transactions, as long as she lives; during which time, the widow of Debadutt has no right whatsoever to interfere. (*a*) *Hindu Law*

Opinion of Ramcharan Surma.

Should neither son, grandson or great grandson be living, the widow inherits her husband's estate. This authority is taken from Vrihaspati, in the *Dāya Bhāga: In the vedas and Smriti shastras, the learned looked upon the wife as half the body (of the husband). They receive the fruits of each other's acts. As long as the wife exists, half of the husband is still living: how can the wealth be received by another? If a person dies without issue,—his progenitors, father, mother and other sapindas (related by the funeral cake), the sons of the father, grandfather, being alive,—still his wife inherits his right to a share of the patrimony. The fire consecrated by a person before his death becomes his wife's; after his death, also his estate. This is the divine law. Fixed property, moveable property, gold, metals, grain, expressed juices, apparel,*

(*a*) Goverdhun Cowl affects to adhere to the literal text of Menu, explaining away the one commentator whom be quotes; but he could not have been ignorant that such a course was opposed to undoubted authority. Mr. Colebrooke's *Daya Bhaga* (published 16 years afterwards) makes it apparent that the sacred text has been necessarily construed and explained (we may not say, modified) by reasoning and inference, and that the detail of the law is to be found in the glosses of recognised commentators. Goverdhun's opinion could scarcely have been an honest one.

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let her take, and make his sraddhas, māsika, shān māsika, ābdika (*a*). *The husband's paternal uncle and the teacher, the grandsons by the daughters, the nephews (sisters' sons), uncles (mother's brothers), are to be considered by her,—also the articles necessary for the seradha and other religious and beneficient purposes, the protection of the aged, the helpless, the guests and females. The sapindas and cousins, who oppose her receiving her husband's property, are to be punished by the raja, as thieves.* Jīmūta Vāhana, the compiler of the *Dāya Bhāga,* then says: *According to the seven bochons* (*b*), *if a person dies without leaving issue, his wife inherits all his estate, both fixed and moveable, even if her husband's brothers, uncles, grandchildren by daughters, and so on, are living; and whoever among them attempts to keep it from her, or appropriate it to his own use, should be punished as a thief. Thus says Vrihaspati,—during the lifetime of the wife, the progenitors' title to the husband's estate is far off; let them not think of it* (*c*). Thus far from the *Dāya Bhāga* by Jīmūtavāhana.

According to the *Vyavasthārnava* by Raghunātha Sarva Bhaumo, and according to the *Dāya Tattwa* by Raghunandana Bhattāchārya Smārta, and according to the *Vivādaratnakara* by Chandeswara, and according to the *Vivāda Chintāmani* by Vachaspati Misra, and according to the comment on Menu by Culluca Bhatta, and according to the *Mitākshārā* by Bhāttāraka Paramahansa, (*d*) and other authorities in use, I have given my opinion.

(*a*) Māsika—at the end of every month for a year.

Shān māsika—at the end of six months.

Abdika—at the end of a year.

(*b*) i. e. *the sayings* previously quoted, being seven stanzas or slokas.

(*c*) These several passages from the *Daya Bhaga* (ch. XI. sec. I.) are somewhat differently translated by Mr. Colebrooke, but to the same purport.

(*d*) The author of the *Mitakshara* was Vijnyaneswara, sometimes called Vijnyana Yogi:

Calluca Bhat's comments. *Hindu Law*

Neither brothers or parents, but (*on failure of an* ouros (*a*) *son*) gawon (*b*) *sons shall take the inheritance of the father, the* ouros *son has the preference over them.—On failure of the best of sons, and also of the wife or a daughter, the father shall take the inheritance; and in case of failure of all these, the brothers shall take it.—Of a son dying childless, the father shall take the estate.*

It has been said before, that the father is entitled to it, here the mother. Yājnavalkya, by mentioning parents, has brought them on a level, as also Vishnu, who says—*The wife inherits the estate of a person dying childless, then the daughters and grandchildren by daughters, then the parents*—which also brings the father and mother on a level; let them therefore share equally. *If there be no mother, or, if the mother be dead, on failure of the wife, the father, brothers and nephews, the grandmother shall take the heritage* (*c*).

Whereupon, the Court gave

Judgment for lessor of plaintiff. (*d*)

Bhattaraka is an epithet of respect, Paramahansa is a religious title.

(*a*) begotten (lawfully); son of the body.

(*b*) inferior, i. e. other than those born in wedlock.

(*c*) These several passages (annexed to Ramcharan's opinion) were read or repeated by him when questioned in Court, and some of them are then a little differently translated, viz. *Neither brothers or father, grandfather or great grandfather, but a son legally begotten, and in case of failure* gawon poottrohs *are heirs to the deceased. A son legally begotten has the preference to all. But of him who leaves neither a legally begotten son or wife or daughter, the father shall take the inheritance, and in failure of them, the brothers.—The wife inherits the estate of a person dying childless, then the daughters and grandsons, then the parents.—If there be no mother, the wife, the father, brother and nephews being dead, the paternal grandmother shall take the heritage.*

(*d*) There is no note of any observation of the Court. A suit in equity by this defendant against

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JOHN COCHRANE *v.* HURREHKISHNO DAAS, BHOWANI DAAS AND DUARCAH DAAS. (1795)

Hoondee. Certain bills of exchange current amongst the native bankers or shroffs of Hindostan pass by indorsement, although not in their terms or tenor negotiable.(*a*)

Indorsee permitted, under the circumstances, to sue in name of original payee; but the judgment set aside on appeal (*b*).

Chambers' notes. 20, 21, 23, 24, 25 Feb. 18 March 1795, 24 Oct. 1st Nov. 1797: *and S. C. Records* (*c*).

ASSUMPSIT: two counts on bills of exchange drawn, at Masulipatam, by Greedhur Daas for Gopal Daas and Mocoond Daas, upon and accepted by defendants, payable 21 days after sight, in favor of plaintiff: money counts.

The instruments declared on were in the commercial Nagree character: the translation produced in support of the first count was as follows:—

To Gopaul Daas, Hurrehkrishna Daas Jee, at Calcutta, from Gopaul Daas, Mocoond Daas at Masulipatam, Greeting. We have drawn a bill of exchange upon you for rupees 4,000 four thousand, the

Radhamoney and the two (separated) brothers of Lallbehari Dhur was heard on further directions 29th Nov. 1796: *Burroughs*, *Strettell* and *Shaw* for complt. *Macnaghten*, *Ledlie* and *Carrington* for the several defts. Sir Robert Chambers' MSS. contain a full note of the argument of the complt's counsel, who asked, that the brothers of Lallbehari should be appointed managers of the estate—that Radhamoney be declared entitled to a life interest only—also that it be declared to what share complt. was entitled for her maintenance and to what estate she would succeed if she survived Radhamoney—also whether or not the two brothers had the reversion in fee: they proposed a reference to the Pundits. For Radhamoney, it was contended, that the judgment in the ejectment had in effect decided the questions in this suit; but the argument was cut short by a compromise between the parties.

It clearly appears from the propositions stated and the general course of the argument, that very indefinite notions were then entertained of the proprietary rights of Hindu females. Several passages of Menu were quoted, and *Shaw* argued int. al.; that, the word *sons* is often used in books of Hindu law for *issue*, or rather it includes all issue, also includes a wife; also that—on the death of a man, leaving a widow, a son and an unmarried daughter, the widow and children are coheirs.

(*a*) Note XII.

(*b*) This case is reported for the first point, which (semble) is untouched by the judgment of the Pr. Council.

(*c*) *scil.* the exhibits, which have been found in the prothonotary's office.

half of which is two thousand, which full sum received from Mut Polee Vancata Chullum payable at 21 twenty one days after sight to Mr. Cochrane in Sicca money current in the Calcutta Bazar with due caution. The Sumbut year 1848 Cartick the 1st of the light side of the moon Friday. *Hindu Law*

(signed) GREEDHUR DAAS his mark for me.

The following acceptance was indorsed:—

Accepted by Gopaul Daas Hurrehkrishna Das Jee payable when due to the person in whose favor drawn.

Four thousand rupees to be paid in full |4.000|

My brothers Gopaul Daas Jee, Hurrehkrishn Daas Jee.

The bill in the second count was for Rs. 1,000, in the same form, but dated a day subsequently: the acceptance slightly varied from the other, viz.—

Accepted by Gopaul Daas Jee, Hurrehkrishno Daas Jee.

Date the 7th of the dark side of the moon in Aughun Friday payable to the person in whose favor drawn when due.

One thousand, &c. My brothers, &c. (as the other).

A gomastah of the firm who were, in fact, both drawers and acceptors of the bills, deposed, on cross-examination for defendants:—

Hindostany bills are usually drawn in this form, and are negotiable by the payee without any express words to make them so.

The following transaction was disclosed by the evidence.

The bills, blank endorsed by plaintiff, were deposited in The Bengal Bank (which afterwards failed), to the credit of plaintiff, who was in the Bank's debt to a larger amount. Just before the bills fell due (in fact, but being mistakenly treated as due), they were paid away, by the Bank trustees, after the failure, to Ocoor Sein & Co. in discharge of a debt of the Bank and to redeem Company's paper. The Bank clerk, Henchman, wrote, at the time of delivery of the bills, on behalf of the Bank,

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his receipt or indorsement on them. When Ocoor Sein presented them for payment, defendants claimed to set off and tendered notes of The Bengal Bank. There was, subsequently, an indorsement by one of the Bank trustees, who then cancelled Henchman's receipt, as unauthorised. Afterwards (*scil.* on the trial), all indorsements were struck out. It was admitted that Ocoor Sein and Co. were the real plaintiffs.

Burroughs, for defendants, is willing to admit that the bills were not negotiable, (*a*) but "as the Court may think otherwise" he contests the liability on both suppositions.

He contends—if negotiable, the Bank took as Cochrane's indorsees and on account of his debt; and then, Ocoor Sein presented the bills for payment as the Bank's agent. An indorsee cannot be permitted to sue in the name of the original payee: such a license might prejudice the drawee's right of set off against the holder or the last indorsee.

If the bills be not negotiable:—

The assignee of a chose in action must take it subject to the respective intermediate equitable claims of those through whom it has passed. At Law, notice is always sufficient evidence of fraud; in Equity, not always. The defendants could not have paid to this plaintiff after notice of the assignment. The assignment or indorsement by the Bank's trustee was after the Bank had through Ocoor Sein, presented the bills for payment, and the bank-notes had been tendered.

The trial was closed on the 24th February: on the 25th the Chief Justice delivered the judgment and resolutions of the Court, viz.

(*a*) It had been contended, with reference to this point, by plaintiff's counsel (*Shaw*), that st. 21 Geo. III, s. 17 extends to no case where a British subject is either plaintiff or defendant.

"We think ourselves bound, by the evidence, to declare, that the bills in question, and all drawn in the same form, are *negotiable* by the usage and practice of shroffs in Bengal and in other parts of Hindostan, though they want the words *or order*." Three other resolutions follow, to the effect—that defendants are not discharged, and that Ocoor Sein and Co. are the beneficial holders. The note of the Chief Justice proceeds:

"Whether the action is rightly brought in the name of Cochrane may perhaps be doubtful: but, on the whole, it appears to me, that these bills were given in the ordinary course of business and, as must be presumed, for a valuable consideration—that the house of Ocoor Sein and Co. are honest and innocent holders of these bills—and that the defendants have the amount in their hands; and therefore I should be sorry to deprive them of their remedy, on a formal point respecting the mode of proceeding."

Judgment for plaintiff.

This judgment was appealed; and the ordering part of the judgment of the appellate court was as follows:

Upon payment of the costs of the trial by the defendants (the now appellants) to the plaintiff (the now respondent) the said judgment of the 25th March 1795 (*a*) should be reversed and a new trial granted and that the defendants (the now appts.) should be at liberty to move the Court for leave to give in evidence any such special matter as they may be advised giving the usual notice and therein specifying such special matter in such manner as is required by the standing order of the Supreme Court and likewise be at liberty if they shall so think fit to file a bill in Equity against the plaintiff (the now respt.) or any of the other parties in the transaction.

(*a*) date of final judgment.

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Accordingly, on the 24th October 1797, this Court set aside their judgment and directed a new trial, and on the 1st Nov. a rule was granted to give in evidence special matter "as set forth in the notice read to the Court" (*a*). No further trace of proceeding in this case has been discovered. (*b*)

SRI MUTI INDERKOOR RANI *v.* BANNARASSY GHOSE.

(1795)

Benamee. The law of *Kisenmohun Ghose* v. *Beejoyram Surmono* (sup. 315) and *Sooberdraw Dossey* v. *Ramcaunt Dutt* (sup. 319) supported, on contested argument. (*c*)

Chambers' notes, 10th, 11th, 13th, 18th July 1795 (*d*)

ASSUMPSIT: on the money counts. The evidence was a promissory note or written acknowledgment of debt

(*a*) See 40th Plea Rule of 1794.

(*b*) Had the Privy Council negatived or disapproved of the first resolution of the Calcutta judges viz.—that such an instrument was negotiable—they would scarcely have directed a new trial, much less have reversed the judgment. In that view, the defence was merely equitable; and the justice of the case would have been met by staying proceedings upon the judgment, pending a suit on the other side of the Court.

(*c*) This case really goes further than the former two; but there was here evident collusion between the nominal creditor and the defendant. The principle or practice established may be taken as described in the opening argument of the defendant's counsel: that the Court had sanctioned it prior to the statutory introduction of native laws, is deducible from a note of a case by Mr. Justice Hyde, viz. of an attempt, in 1778, to maintain ejectment upon the demise of the beneficial owner of a benamee pottah. This was not permitted; but the learned judge writes, after referring to *Cramlington* v. *Evans*, 1 Shower 4 (in which the payee was upon the face of a bill a trustee or mere recipient for another, but was nevertheless held by Lord Holt to have the sole title at law) and to a resolution of the judges of the Sup. Court that the nominal creditor in benamee instruments might always sue —"I said I thought we had so far complied with the very general practice in this country of using the names of other persons, in mere personal demands, that in many cases the plaintiff had recovered on notes not in his own name, but in some other name giving in evidence that the transaction was really his, such for

from the defendant to one Rausbeharry Mozendar, who was called for the plaintiff. This witness admitted that he was the servant or vakeel of the plaintiff at the time the money was lent, and that the money was the plaintiff's; but he denied that the defendant knew it to be the plaintiff's money, and alleged that the money was lent by, and had been repaid to himself, also that the plaintiff was in his (witness's) debt to a larger amount. Other witnesses explained the transaction differently, and proved that the defendant well knew whose money he borrowed, and had promised to pay upon repayment being demanded in plaintiff's name. A jemadar in plaintiff's service who swore to having taken the money, Sa. Rs. 3,000, to the defendant, stated that he afterwards informed the defendant of Rausbeharry Mozendar having been dismissed from the plaintiff's employ: this was long before the date of the alleged repayment. The same witness deposes;—The note was given in the name of Rausbeharry by order of the plaintiff. I asked plaintiff in whose name it should be taken, she said in the name of Rausbeharry Mozendar. Rausbeharry and the defendant were both present when

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instance as that the money lent was his and that he took the bond in the name of the other." *Doe dem. Tilluck Seal* v. *Gour Hurry Day*, tit. POTTAH infra. So that the action was maintainable either by the nominal or real owner of the debt. In the present day, this class of cases would probably be treated as ranging under the law of principal and agent, rather than of trustee and cestui que trust, and as not calling for any relaxation of the ordinary rules of evidence: see *Sims* v. *Bond* 5 B. & Ad. 389, *Higgins* v. *Senior* 8 M. & W. 834. The practice of permitting the unnamed principal to recover, even where his title was clear and the defendant not prejudiced, contrary to the tenor of a written acknowledgment, was however then considered a judicial concession to Hindu usage; the cases establishing it are therefore reported.

(*d*) The depositions in the Record office have been referred to.

Hindu Law I informed them that plaintiff had ordered to have the note taken in the name of Rausbeharry.

Burroughs and *Strettell* applied for a nonsuit.—English law was introduced into this settlement by the charter of 13 Geo. 1st: no alteration was made in favor of Hindus or Mohammedans till the st. 21 Geo. III, by which the Court is empowered to make rules for process, but not for plaints, adapted to the case of Hindus and Mohammedans; but no such rules have been made. We admit, upon the authority of two decisions of this Court (*a*) that—where the person assuming to be the real plaintiff and as such suing in his own name gives notice to the defendant before trial that the suit is brought for money belonging to the plaintiff A, although secured by a note given by the defendant to B, and B appears as a witness for plaintiff and swears that the money is A's, judgment may be given for the plaintiff. But here, the parol evidence to contradict the writing is not consistent: the nominal obligee does not support the case.

Shaw and *Dickens* contra — This point has already been decided. The witness Rausbeharry Mozendar is called ex necessitate; the general effect of his evidence is in plaintiff's favor. This action is not upon the note. (*b*) Mr. Dickens referred to Mr. Justice Buller's argument in *Master* v. *Miller* (*c*) and urged, that the Hindu law knew no difference between a Court of law and a Court of

(*a*) See marginal note.

(*b*) Sir Rob. Chambers' MSS. contain two exparte cases (before himself alone) on the 27th June 1796 between the same parties viz. *Prankissen Banaji* v. *Sreejoot Rai*, each of which was "an action on a Bengal note, but with the common counts." Both notes were given for the benefit of the plaintiff, but to and in the name of one McCullum who was called and deposed:—I have no interest, though my name is used. Judgment for plaintiff was given in both cases.

(*c*) 4 T. R. 320.

equity. *Mason* v. *Lickbarrow* (*a*) and *Stokes* v. *Stokes* (*b*) were also referred to. *Hindu Law*

Burroughs in reply, contended, that all such actions should be brought in the name of the trustee. St. 21 Geo. III does not authorize this Court to vary the forms of actions: at all events, before one man can recover in the name of another, the action should be preceded by notice who is the real plaintiff, and it should be supported at the trial by the evidence and disclaimer of the trustee.

A nonsuit was refused. One witness was called for the defence, who merely proved entries of payment, in defendant's books.

Judgment for plaintiff, for Rs. 3,000 with interest, according to the note.

SOROOPCHUND ADIE *v.* ROGONATH CHUND AND KISTNOMONEE. (1796)

Will.
Will rejected on conflicting evidence.
Qu. what proof sufficient or admissible?
Chambers' notes, 30 Jan. 1, 2, 4, 5, 6, 8, 9 Feb. 23, 24, 26 March, 13, 21, 23, 25, 26 July 1796, 14 Feb. 1797.

ISSUE from the equity side of the Court, to try the genuineness of a writing propounded as the last will of Brijomohun Adie. The translation put in was as follows:

Sri Sri Radha Crishnojee
The year 1200

To Srijut Perbhuram Dey Srijut Roghunut Chundra Srijut Sarup Chundra Adie and Srijut Gocul Doss.

I Sri Birjomohun Adie make the following will during my life-time, of my own accord, I make you my will; you will take care of my estate, and from the interest of it, pay the expences of the Sri Sri Iswar Acra (i. e. place where hindu mendicants assembled called boishnobs) and dig a tank in a proper place selected for the purpose, under a stipulation that it shall not cost more than

(*a*) 1 H. Bl. 357. (*b*) 1 Lev. 272.

Hindu Law three or four thousand rupees. To this agreement I have written this will, thus. 7th Choitr.

The plaintiff's case was proved by a witness who deposed that he was accidentally present when the will was written by the testator, who showed it to the witness and requested him not to speak about it.

On behalf of the defendants (the daughter of Brijomohun Adie and her husband) witnesses were called to disprove the handwriting of the alleged will and to prove declarations of deceased inconsistent with its provisions. These were contradicted by witnesses in reply, who proved declarations of intention to make and testator's reasons for making such a will and who deposed to the handwriting (*a*).

There were but two judges on the Bench (*b*); the chief justice found against the genuineness of the alleged will, the puisne judge in its favor: the judgment of the Court was therefore for the defendants, but plaintiff elected a nonsuit.

A rule nisi was granted, first on the plea, afterwards on the equity side of the Court, for a new trial: the Court agreed in discharging the former rule, as irregular; upon the motion in equity the two judges differed, as they had done at the trial. Sir Robert Chambers has the following note of the grounds of his judgment in disaffirmance of the will:

"I am sorry on any occasion to exercise my double voice, and the more so in a doubtful case. It may seem odd that, in a case of fact, I should resort to rules of law; but, as a juryman, I think the established rules of law ought to have weight with me, as rules of sense and reason. The general rule as to wills is, both under the Canon law and the Common law, that two witnesses are

(*a*) This evidence was objected to but admitted, after argument.

(*b*) Chambers C. J. and Dunkin J.

required; so it is laid down in 3 Salk. 396 (*a*). But, as to that point, there are so many exceptions, that the rule, though still law, is much overlooked. The rule is taken from the *Digest* by the canonists, and the exceptions exclude the necessity, not only of two, but even of one witness. Swinburne's reasoning, Pt. 4, 335-9 (*b*), I adopt as my own: it is so forcible: and so I should, if I found it in Galen or Aratœus. Common law judges, sitting in a Court of Delegates, are judges of the fact, as well as of the law, and bound, ut supra. I think 1 P. Wms, Ca. 3 (*c*) a very strong case; as the rule borrowed by the Canon from the Civil law is a hard one, and yet it there prevailed. I shall add merely, that the proof of the issue lay on the plaintiff, and that he has not proved it. I do not think the witnesses on either side are of more credit than the other; and moreover, I cannot find for the will, because it has not those circumstances of credit and probability, which, in common sense as well as by law, supersede the necessity of witnesses." *Hindu Law*

From a subsequent note of the chief justice it appears, that he considered the weight of evidence to be against the will, and that he was much influenced by what he designates, the "altum silentium which then subsisted respecting the finding of the will."

Nonsuit (*d*).

(*a*) *Lea* v. *Libb.*

(*b*) This reference must be to sect. 25, Part IV.

(*c*) *Twaites* v. *Smith.*

(*d*) A petition of appeal was allowed against this nonsuit: v. supra p. 80 & p. 88 no. (*f*). In the equity suit, a decree was made in conformity with the result of the issue, exparte 19 Feb. 1798; the final decree for partition amongst the heirs was by consent, 11 July 1799. (*S.C. Records*) The appeal must therefore have been abandoned.

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O'DONNELL, ADMINISTRATOR OF CHURCH,

v.

MAHARAJAH RADANAUT BEHAUDER. (1798)

Infant.
An action cannot be maintained against an infant zemindar, upon whose written guarantee money has been borrowed to pay the government rent or revenue due in respect of the infant's zemindary.
Dickens' MSS.
July 10, 1798. (*a*)

ASSUMPSIT upon a guarantee, also for money paid, money lent and money had and received.

The second plea, which was to the whole plaint, set forth that the defendant was an infant, under 12 years of age, at the time of making the said several promises, and that he was a Gentoo, and that, by the laws and usages of the Gentoos, an infant under the age of 12 years cannot bind himself by any contract.

Replication: that all the monies were lent and advanced for, and were actually expended in the payment of rent due to the Company from the defendant as zemindar, and that they were necessary to be so expended, and that the said lands were necessary for and to be holden by the defendant, and were fitting proper and requisite for his state, rank and degree.

Demurrer: that the replication was a departure, and was no answer to the plea.

Strettell and *Dickens*, for the demurrer. The replication does not support the counts. An infant, by Hindu law, cannot bind himself, even for necessaries, *Menu* ch. VIII. s. 163: the contract is void. By English law, an infant cannot bind himself for the debt of another: this cannot be necessary, nor for his benefit. It might be necessary that the Government rent should be paid, but not that the infant should enter into a written guarantee to secure money lent to others for that purpose. If an infant borrow money, though he afterwards employ it for necessaries, no assumpsit lies, *Earle* v. *Peale* (*b*). The assumpsit here is implied from a lending to the defendant's

(*a*) The proceedings of record have been referred to.

(*b*) 1 Salk. 386.

servant: this will not support the count for money lent, *Marriott* v. *Lister* (*a*). Neither does an action for money had and received lie against an infant. *Hindu Law*

Shaw appeared for the plaintiff; but

THE COURT (*b*) were clear that the replication could not be supported.

Judgment for defendant.

DIALCHUNDRO ADDIE AN INFANT BY [FIVE PERSONS (*c*)] HIS NEXT FRIENDS *v.* KISSOREY DOSSEY WIDOW OF JUGGUL ADDIE A HINDOO DECEASED AND PARBUTTY DOSSEE WIDOW. (1793-5-9)

Will.
Bequest to widow.

Simple words of gift of testator's property between his widow and his heir, Held: the widow takes a moiety, but her interest is qualified—i. e. she has absolute power of disposal over the produce and profits whilst she lives, and she may, in pios usus &c., encroach upon the corpus of her moiety, but under sanction and control of the heir. (*e*)

S. C. Records; *and Chambers' notes*, 4th term 1793, 3rd term 1794, 2nd term 1795.

THE subject of this suit was a large estate, in land and money, descended from Juggul Addie, the infant's grand-father. The second defendant was the infant's mother. The bill was filed in July 1793, for an account and possession of the estate, and bears the signature of Mr. Burroughs, who had been an advocate of the Court since 1789 (*d*). After shewing the plaintiff's title as heir, the bill states,—that Juggul Addie, about a year before his death, having cancelled a paper writing containing directions respecting the management of his property after his death, from motives explained in the

(*a*) 2 Wils 141.

(*b*) Dunkin, Royds, and Russell Js.

(*c*) Banarassey Ghose, Collychuren Holdar, Nittanundo Sein, Benoderam Mullick and Modoberam Mullick.

(*d*) And was in 1806 raised to the Bench.

(*e*) The principle of decision which seems safely deducible is,—that the Court, having satisfied themselves of the testamentary power in Juggul Addie, considered the intention of his Will to be, to make his widow an executrix, and to confer upon her a distinct and separated interest, i. e. the exclusive enjoyment of a half-share. This construction was not inconsistent either with the terms of the instrument or with the surrounding circumstances. The Will was not (and

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bill, caused another writing to be prepared which he delivered to his son Nundololl Addie, and which contained a desire or request, that Nundololl Addie and Kissorey Dossey (the defendant) should be his executor and executrix—that Kissorey Dossey well knows that the last mentioned paper writing was prepared with an hope and intention to prevent any dispute between her and Parbutty Dossey in case they should survive Nundololl Addie and N. A. die without issue, wherefore K. D. during the life of N. A. never did or could act as executrix or interfere in any of the concerns of the estate of her husband—that if when the last mentioned paper writing was so prepared N. A. had had any child or children, Juggul Addie would not have thought of desiring that K. D. should act as his executrix, but would have committed the whole exclusively to N. A. and his heir or heirs at law—that by the said last-mentioned paper writing or by any possible construction or legal operation thereof the said N. A. could not be divested of his exclusive right and interest in the whole of the estate as K. D. well knew—that after the death of Juggul Addie K. D. well knowing that N. A. was of full age and experience to undertake the sole snd entire management of the estate and entitled to the same never did directly or indirectly or any one for her during the life time of N. A. interfere or concern herself in the management thereof—that if K. D. had been desirous of doing so she was totally incapable, being a very old infirm woman and not able to read or write any language and totally incapable of transacting any business but particularly that of an

could not regularly be) established in this suit; but it became necessary to define the widow's right. That right, as decreed, varied (semble) in no respect from the portion and interest ordinarily claimable by a mother upon a partition amongst her sons of their patrimony. The widow however was declared to take under the Will.

estate of such magnitude—that N. A. from the death of Juggul Addie continued in the management thereof as his own and yearly until his death considerably improved and benefited the same—that Juggul Addie had no right nor has any Hindoo native a right to give or bequeath his estate to the disinheritance of his lawful heir—that the said last-mentioned paper writing was not regularly or duly executed by J. A. or competent or sufficient to pass or convey away the estate or the management thereof or in any manner to affect or prejudice the rights which complainant and his father would have had if the said paper writing never had existed—that if the said paper writing had been duly executed by J. A. or N. A. yet complainant would by the Hindoo law when of age be entitled to the exclusive and separate management and possession in his own right of the estate both of J. A. and N. A. subject only to the maintenance of their respective widows during life and of Heeramoney [plaintiff's infant sister] so long as she continued single. The bill charged Kissorey Dossey with having obtained possession, by artifice, of the title deeds and securities and other effects after the death of Nundololl Addie, and that she had committed the management of the estate principally to one Gopeechurn Day a necessitous relative of her own residing out of the jurisdiction at Chandernagore; it also charged her intention to remove out of the jurisdiction with part of the property, also actual and intended waste. *Hindu Law*

Kissorey Dossey, by her answer, sets up the paper writing referred to in the bill, as the last will of Juggul Addie, and says, that the estate, from the time of the testator's death, had remained in the joint possession of herself and her son Nundololl Addie: she insists upon her exclusive right after his death to manage, and to be the plaintiff's guardian: she says that her reason for permitting Nundololl Addie to manage and conduct

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the business of the estate in his own name was because he was one of the executors and because as a Hindoo woman of rank or consequence she could not consistently with the laws customs and religion of her caste appear in public to transact the business of the estate, it being usual in all cases for Hindoo women of a rank above the vulgar in Bengal to live retired in their apartments and to transact their business through the medium of some near relation: she denies that plaintiff is entitled to the real and personal estate of his grand-father or to more than a moiety thereof, receivable by the laws usages and customs of the Hindoos on his attaining the full age of sixteen years and not before: she says, that he is entitled to nothing more than a maintenance during his minority—that she is entitled under and by virtue of the said Will to one full moiety or half part of all the estate both real and personal of Juggul Addie: she admits to a certain extent having committed the management to her brother Gopeechurn Day but denies his being necessitous or resident out of the jurisdiction: she expresses her readiness to account, but denies that she is accountable to the infant or to those suing as his next friends and who are not in the position of his guardians.

Parbutty Dossey admits the case in the bill.

The following is the will, with its translation by Mr. Blaquiere, as annexed to the answer of Kissorey Dossey:

শ্রীশ্রীরাধাকৃষ্ণ।
সহায়।

শ্রীজুগলকিশোর আঢ্যস্য।

লিখিতং শ্রীজুগলকিশোর আঢ্যস্য।
উইল পত্র মিদং কার্য্যনঞ্চ আগে আমি আমার স্ত্রী শ্রীমতি কিশোরি দাসি ও আমার পুত্র শ্রীনন্দনাল আঢ্যকে স্বইং সা পূর্ব্বক আমার ইষ্টেটের জাইণ্ট এক যে কিটরষ করিলাম আমার দৌলাত ও আমলা ওগয়রহ সমস্তের মালিক করিলাম এই উইল পত্র সেওআয় আর কোন উইল পত্র কাহারো নামে থাকে তাহা রদ্দুল করিলাম ইতি বাঙ্গলা সন১১৮৮ এগারো সত অষ্ট-আসি সন ইংরেজী সন ১৭৮১ সাল তারিখ—৫ভাদ্র।
১৮ আগষ্ট।

Sree Sree Radha Krisno
Sohaye

(Signature.)

I Sree Juggulkishore Auddie execute the following will. I of my own free will make my wife Sreemotee Kishree Dausee and my son Nundoolaul Auddie joint executors to my estate I make them masters of my estate, effects, &c. Should there be any other will in any body else's name I hereby make it void. Dated the Bengal year 1188, English year 1781, the 5th Bhaudro, the 18th August.

The names and residence of four witnesses are indorsed.

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On the 23rd, 25th, and 26th November, cause was shewn upon an order nisi (obtained 28th October),—for a receiver of the houses of Juggul Addie and Nundololl Addie—that Kissorey Dossey should deposit with the Accountant general all bonds, &c. money and valuable effects—and for an injunction to restrain her from receiving rents &c. and from selling and disposing.

Strettell and *Shaw* shewed cause. *Shaw*, in reply to Mr. Justice Jones, who read some passages of Hindu law with regard to the dependance of women, contended, that those passages relate, not to property or the disposal of property, but merely to the personal and moral conduct of women. He quoted from Halhed's code (*a*), to shew, that a woman may have a right to dispose of her own property, at least of particular kinds of property, and argued, that she has, consequently, a right to the management,—that if, in any case, a woman has the power of disposing of her property and giving it away, she must a fortiori have the power of appointing a trustee or manager for herself, if she is dissatisfied with those whom the law or the magistrate has provided.

Ledlie and *Burroughs* contra—We do not ask to be managers; who shall be is a future question; all we ask is, that the estate be now taken care of by the Court.

ORDERED (*b*)—

That the parties do go to trial on a feigned issue of devisavit vel non to try the validity of the Will of Juggul Addie in the pleadings in this cause mentioned and that the said issue do come on to be heard on the first day of next term—that this motion do stand over until the determination of that issue and that the defendant

(*a*) "A code of Gentoo laws, or Ordinations of the Pundits, from a Persian translation, made from the original written in the Sanscrit language."—London 1776.

(*b*) No note of the judgment on this hearing.

K. D. do bring into this Court on or before Saturday next the 30th day of November instant one moiety of the personal estate and of all the securities for money belonging to the estate of the said J. A. and that a receiver be appointed of the real estates who if he receives any rents before the decision of this motion shall pay one half of the rent he so receives to the said defendant K. D. and the other one half to the Accountant general of this Court—that a writ of injunction do issue out of and under the seal of this Court to restrain the said defendant K. D. from receiving the rents and profits of the real estate and from selling or mortgaging or otherwise disposing of or in any way incumbering the houses lands or hereditaments or from negociating mortgaging lending or otherwise disposing of any of the United Company's bonds certificates notes and securities for money or any other property goods or effects belonging to the estates of the said J. A. and N. A. deceased until the final decision of this rule or until further order of this Court." *Hindu Law*

The parties accordingly went to trial in January 1794, upon an issue, which was found in the affirmative, viz:—that the said Juggulkissore Addie deceased did by the said paper writing dated 18th August 1781 devise and bequeath all his riches and landed property to wit situate at Calcutta to one Nundololl Addie the son of the said Juggulkissore Addie and to the plaintiff Kissorey Dossey. This conclusion was come to by the Court(*a*) after hearing the opinions of the Pundits upon the Will(*b*).

(*a*) Chambers C. J., Hyde and Dunkin Js.

(*b*) By this reference, judgment or rather the verdict on the issue was delayed for six months, viz. till July. The case submitted to the Pundits, and their opinions, translated by Mr. Blaquiere, are given, from Sir Robert Chambers' note-book, infra Note XIII. It will be observed, that the Court do not follow the Pundits, in their definition of the widow's interest under the Will.

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On the 6th April 1795, the adjourned motion in Equity was heard: the Pundits' opinions were read. The Note of the Chief Justice proceeds as follows: "These papers having been read, the advocates on both sides requested that they might be permitted, in the first place, to argue and to obtain the opinion of the Court on the mere question, what estate Kissorey Dossey takes in the moiety bequeathed to her by her husband of his property. Accordingly, that question was fully discussed, and the Court(*a*) declared their opinion in these words;

THE COURT are of opinion, that the defendant takes an estate for life of a moiety of the estate bequeathed to her by the Will, with the full permission of enjoying and disposing of the rents issues and profits thereof during her life, and with liberty to break into the principle sum for pious uses or other purposes with the express permission of this Court or with the consent of her grandson, after he shall come of age(*b*)."

The order upon this motion was,—that K. D. register the Company's paper so as to preclude its being negotiated except by joint consent of herself and the minor's guardians—that K. D. pay to the credit of the cause

Sir F. Macnaghten, in his "Considerations" (p. 359), criticises the Court's construction, but, although himself an officer of the Court at the time, makes no allusion to this, perhaps the strongest objection to the Court's ruling. The conjecture of Sir Francis as to the ground of construction is, in effect, that adopted supra p. 371, n. (*e*).

(*a*) Chambers C. J., Hyde and Dunkin Js.

(*b*) This opinion is also preserved in the Registrar's minute. From a note of Mr. Dickens (which is extracted in the first edition of this book, but which with all other *Equity* MSS. of Mr. Dickens have been since unfortunately mislaid), it appears, that the consent of the Court to the widow's disposal of the property was declared to be necessary, because the Court considered themselves to "represent those that by the Hindu law are to control and superintend in these cases."

Rs. 35,000 "as an additional security to the complainant Dyalchundro Addie for what may ultimately appear to be the moiety of the said Dyalchundro Addie of and in the estate of Juggulkissore Addie and Nundololl Addie" —upon such registry and payment the injunction to be dissolved so far only as it restrains her from receiving the moiety of the rents issues and profits of the said estates of what nature or kind soever(*a*). *Hindu Law*

The first hearing of the cause, and when an account was decreed, was April 5th 1796. At the hearing on further directions, November 22nd 1798, it was ordered, that the injunction, as it stood, be perpetual—that the pottahs, title-deeds, account-books, securities for money, and muniments of the estate remain in the hands of the Acct. Gl. until the infant come of age—the Acct. Gl. to realise the securities, half of the proceeds to be retained for the infant's use, the other half to be invested in Company's paper to be registered and then delivered to K. D.—that the Acct. Gl. receive the rents of the immoveable property and divide them between the infant and K. D.—declared, that K. D. is entitled to all rents profits and interest of one half the property that have accrued since the testator's death and an account directed—reference as to the infant's maintenance and education also as to the allowance to his mother(*b*) Parbutty Dossee, also as to who are proper persons to be the infant's guardians(*c*)—with other usual directions.

(*a*) There is a petition of Kissory Dossey, for leave to appeal, signed by her advocate Mr. Strettell, on the files; it explains the objections then felt against the manner in which her interest was dealt with. The reasons of appeal are extracted, Note XIII. No further proceeding appears to have been taken in the appeal.

(*b*) See proceeding before the Master upon this item of reference, Note XIII.

(*c*) From an order of Aug. 13, 1795, it appears that the infant's next friends were ad interim treated as his guardians. That order, as bearing upon the conduct of this suit and shewing the practice, is given in Note XIII.

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The final decree, as respects Kissorey Dossey, was made 27th June 1799. It carried out the principle of the former decisions (*a*), giving to her, absolutely, a moiety of all profits and increase of the estate since Juggul Addie's death, e. g. the Accountant general is directed to make over a full moiety of the cash and Company's paper to K. D. and out of Ct. Rs. 580,977-9-10, being the net balance of the estate monies in his hands, to retain one half for the benefit of the infant "and further that the said K. D. is entitled to the other moiety thereof being Ct. Rs. 290,488-12-5 that is to say to an estate for life in the sum of Ct. Rs. 170,612-7-6 being part of the estate of her late husband at the time of his decease and that she the said K. D. shall and may hold enjoy and dispose of the rents issues and profits of such last mentioned sum for and during her life, and further that the said K. D. is entitled to the remaining sum of Ct. Rs. 119,876-4-11 being part of the profits made since the death of Juggul Addie to be at her own disposal."

The same division and provision is made as to the debts incurred before and since testator's death.

None of the immoveable estate in fact came to Kissorey Dossee (*b*), because it was sold, chiefly by the Master: a small portion only was left to be dealt with by the decree of 1799. The suit continued, for the infant's benefit. An order to pay the guardian (Nielmoney Mullick) the expenses of Dyalchund Addie's marriage ceremonies is dated 6th July 1801.

(*a*) The judges, at this time, also when the cause was first heard on further directions, were, Anstruther C. J., Royds and Russell Js.

(*b*) It was considerable, as appears from the Master's supplementary report of 16th October 1797.

GOPEEMOHUN DEB V. SREE RAJCRISTNA DEB AND SUCKEE DOSSEE. (1800)

Adoption.

Requisites and ceremonials of adoption: rights of adopted son where a son of the body afterwards born. (*a*) *S. C. Records.* (*b*)

BILL filed 25th May 1798: the case made by it was—that rajah Nobkissen, a Hindu native of the province of Bengal, A. X. 1767, having no issue by his then five wives, applied to one of his brothers, Ramsoonder Bewarta, to give his son, the plaintiff, in adoption; that plaintiff's father and mother agreed, and he was accordingly taken, being then an infant, as the adopted son of rajah Nobkissen and of his first wife Heeramoney Dossee, upon the condition that, in the event of the rajah not having any son of his body the plaintiff should inherit all his estate, but plaintiff's share of the inheritance to abate proportionably if a son or sons should be afterwards born; "that the said rajah N. did then also call complainant his adopted son and confirm and compleat the adoption of complainant as his the said rajah N. and the said Heeramoney Dossee's son at the religious ceremony called the *choorah*," which ceremony was publicly performed and the adoption proclaimed; that the other wives of the rajah also accepted plaintiff as their son; that in A. X. 1772 Heeramoney Dossee was delivered

(*a*) These were the questions gone into: the points judicially decided were; 1st. that plaintiff had proved *enough* to establish his adoption: 2nd. *Semble*, that an agreement which is the consideration for gift of a child in adoption is binding upon, and not revocable by the adoptive father. The direction of the issues would have been a nugatory act unless the Court had so construed the law. This view is confirmed by the testimony of one of the counsel in the cause, *Considerations* p. 332. It is remarkable that no opinion of pundits nor definite evidence of the Hindu law applicable to the case appears to have been given or called for. Note XIV.

(*b*) The editor has also had the advantage of reference to the briefs and papers of the case in possession of the rajah Radhakant Deb.

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of a daughter; that A. X. 1775 rajah N. took another wife, Belass Dossee; that the defendant Suckee Dossee, one of his original wives, A. X. 1781, bore him a son viz. the defendant Rajcrishna Deb; that shortly after the birth of this son, the rajah wrote a paper and had it delivered to plaintiff to see and correct, that he approved of the same as altered by plaintiff, had it copied, signed and sealed it before witnesses, and gave both the draft and the executed paper to his wife Heeramoney to deliver to plaintiff; that plaintiff having compared redelivered both papers to Heeramoney for safe custody; that plaintiff now has the draft in his possession. A translation of this instrument is set out, being a declaration of "allotment of shares" addressed by the rajah to Heeramoney and to the plaintiff, and in accordance with the alleged conditions and arrangement at the time of the adoption, viz. an equal division between the plaintiff and Rajcrishna Deb, subject to proportionate reduction for future born sons.

The bill proceeds, "that by virtue of the said act gift and confirmation there was vested in complainant by the laws and usages of the Hindoos during and in the life time of the said rajah N. an indefeasible right to the inheritance of such estate or property as the said rajah N. might die possessed of or entitled to conditioned only to abate proportionably and according to the number of such sons as he might have had of his the said rajah N.'s own body"; that plaintiff was always in the habit of wearing the rajah's jewels and of applying the rajah's money to his own use and support, with the rajah's sanction, as an adopted son; that all ceremonies performed only by a son were performed by plaintiff as the son of rajah N. and not as the son of Ramsoonder Bewarta; that the rajah always introduced plaintiff as his adopted son; that on the death of the rajah the plaintiff and the defendant Rajcrishna Deb

jointly performed the usual ceremonies; that the defendants have possessed themselves of the whole estate, amounting to Sa. Rs. 50,00,000. The bill charges waste, fraudulent making away with part of the estate and exclusion of plaintiff from his rights as adopted son under various pretences, inter alia of a last will of the rajah "whereas complainant charges and insists that if the said rajah N. did make any such will or testament he could not under and by the laws and usages of the Hindoos annul or make void and of no effect the said writing so executed by him as aforesaid or complainant's right or inheritance vested in him thereby or by his being so given to and adopted by the said rajah N." The bill also charges that the defendants well know of the said writing having existed and where the same now is if it still exist or if destroyed and how and by whom it was destroyed. The prayer is, for an account and that defendants "be decreed to pay and deliver to complainant what upon such account shall appear to be due by them to him under his aforesaid right and title and that a just partition and division by commission or otherwise be decreed and made of all the estate and property fixed and immoveable which was of the said rajah N. at the time of his decease and that one moiety or half share thereof be allotted to complainant his heirs and representatives according to the laws and usages of the Hindoos subject to the maintenance of the said widows of the said rajah N. in such manner and proportion as this Hble Court may decree," that the defendants be directed to execute proper conveyances, also for an injunction and receiver. *(a)* *Hindu Law*

The defendant Rajcrishna Deb in his answer admits substantially the account given of the rajah's family, and says; that in 1771 the rajah was prevailed upon by his

(a) signed by Mr. Strettell.

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wife Heeramoney Dossee, who was then supposed to be barren or past the usual age of child bearing in Bengal, to "apply for and take into his house and family complainant who was his nephew with an intent to adopt complainant as and for his son and the son of the said H. D. and for that purpose caused the complainant who was then of the age (as defendant has been informed and believes) of seven years or thereabouts to reside with his aforesaid wife Heeramoney." This defendant then objects, that the ceremony called *juggy* had not been performed, and that plaintiff at the time of the intended adoption was more than five years old; that the rajah being made aware of the objection to the adoption being completed "did not then or at any time during his life time adopt complainant as and for his son pursuant to the Hindoo and Gentoo laws customs usages and ceremonies so as to entitle complainant to the rights of inheritance or any other the rights or titles of a natural son or of a son of the body of him the said rajah N. begotten." He denies that plaintiff performed the *sradd* as an adopted son, and insists that in all ceremonies plaintiff conducted himself as the nephew of the rajah. He says that the ceremony of *choorah* and the privileges allowed to plaintiff by the rajah were consistent with and in consequence of his relationship as nephew and had no reference to any adoption: he refers generally to acts of the rajah, besides his last will, which were inconsistent with the rights claimed by the plaintiff and which were not opposed by him: he says that his father never informed him (defendant) that plaintiff was his, the rajah's, adopted son; but admits that the rajah "perhaps might or may have permitted or suffered complainant at some time or other to have passed by curtesy as for his adopted son for the purpose of saving himself (the rajah) the trouble of paying certain visits to European gentlemen of consequence and wealthy natives of India" though he

cannot of his knowledge speak to such having been the case. He gives the following account of the instrument set out in the bill, on information and belief, viz. that shortly after his own birth Heeramoney being jealous importuned the rajah, who "in order to assuage her grief or pretended grief for the situation of herself and complainant (to whom she was and still is greatly attached) in case the said rajah N. should die leaving defendant and the said Suckee Dossee him surviving and entitled to his estate or the greater part thereof and in order to get rid of the said importunities and to pacify the said Heeramoney for the time then being he the said rajah N. did suffer himself so far to be prevailed upon by the cries tears entreaties and other importunities of the said Heeramoney as to write and make upon paper some rough draft or sketch of an instrument in the nature of a will to take effect after his death without however having resolved to execute the same and which in case he the said rajah should have died would if duly executed and not afterwards revoked have entitled complainant and the said Heeramoney or one of them jointly with defendant and the said Suckee Dossee or one of them to the estate and effects of which he the said rajah N. might have so died possessed or entitled unto or to the use of the same or to some interest therein and therefore defendant admits it is probable that the same paper writing may still be in existence and therefore that complainant may have some such draft or paper writing in the handwriting of the said rajah N. as in the said bill alledged but defendant at the same time believes and humbly insists that if the same appear in any manner altered or with interpolations or writing thereon in the handwriting of any other person than the said rajah N. that the same interpolations and alterations are a forgery and fraud intended to be set up against defendant and that the same never were known to or in

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any manner approved by the said rajah N. in his lifetime and defendant insists and submits to this Hble Court that if any such draft of a paper writing there now be as in the bill alledged or herein admitted and whether the same be or be not altered or written upon by complainant and approved by the said rajah N. in his life time that still notwithstanding the same was and is inchoate only and not in any manner perfected or confirmed in or by law or if confirmed in law still that the same was a will or testament or in the nature thereof and intended merely to operate as such and to be revocable at any time thereafter as or in the nature of a will and that the same therefore if existing is wholly null and void or at least ineffectual in law for any such purpose as in the bill alledged and defendant admits that he has heard and believes that after the writing and making of the said rough draft or paper writing by the said rajah N. as herein before particularly set forth he the said rajah N. by reason of the same jealousies enmities desires anxieties fears influence endeavours cries tears entreaties and importunities of the said Heeramoney as aforesaid and in order further to assuage her aforesaid grief and to get rid of the said importunities and further to pacify the said Heeramoney did further pretend to her that he would execute a paper writing to the effect herein before particularly set forth and admitted but not to any other purport or effect and did in pursuance of such pretence cause the same rough draft last mentioned to be fairly written and copied out and did afterwards in some manner execute the same fair copy without however in any manner delivering the same fair copy or doing any act or making any declaration which could render the same valid or effectual in law and did thereupon pretend that the same so executed should be kept by him the said rajah N. to take effect as or in the nature of his will after his death but that the said rajah N. did

not execute the same fair copy in any other manner or mean or intend that the same fair copy should ever take effect and in order to render the same fair copy invalid and with intent that the same though so executed as last aforesaid never should take any effect he the said rajah N. immediately after executing the same left the room where he had so executed the same fair copy and thereupon took away the same fair copy with him and actually and instantly tore and destroyed the same." Defendant then insists and submits "that if any such paper writing ever were executed by the said rajah N. as last aforesaid the same was not confirmed valid and effectual in law or if confirmed or effectual in law at any time still that the same was so executed as a will or in the nature of a will only and revocable and that the same was afterwards duly revoked and rendered null and void to all intents and purposes whatever." The defendant then sets out the last will of the rajah, dated 13th May A. X. 1791, in the English language, and admits possessing himself of the estate as executor: he alleges that the rajah's estate was self acquired "or at least that if any part thereof was at any time the property of and come to the said rajah N. from any of his ancestors the same was very inconsiderable and of very little value wherefore and notwithstanding any allegation in the bill contained (which defendant in no wise admits to be true) he has been advised and humbly insists that according to the Hindoo and Gentoo laws customs and usages the said rajah N. was at full liberty to give devise bequeath and dispose of all and singular the said estate and effects of which he died seised possessed or entitled unto as in and by the last mentioned will is provided for and mentioned." The answer of the defendant Suckee Dossee is substantially to the same effect; she says that she has not "any reason to know or believe nor doth she believe that any instrument or paper writing signed

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and delivered or otherwise executed and delivered or in any other manner legally affirmed by the said rajah N. to any such or the like purport or effect as in the bill mentioned and alleged to be lost or mislaid or holden or kept back from complainant ever did or does now exist" (*a*)

The cause was heard upon evidence on the 8th, 9th, 10th and 12th April 1800.

Strettell and *Macnaghten* for plaintiff.

Burroughs, Ledlie and *Lewin* for defendants.

The depositions fully prove the adoption. They show (to quote the words of Sir Frās. Macnaghten) "the notoriety of this adoption, the universal knowledge that the complainant had acted and been received as the adopted son of rajah Nobkissen, the admissions of the rajah that Gopeemohun was his adopted son, his having been introduced by the rajah as such, and his having ranked in that character for many years."(*b*) With respect to the ceremonial observances to constitute or confirm the adoption and the plaintiff's age when adopted, the evidence was as follows:

BENODRAM DEB: saith,—that when Gopeemohun was about four years of age, rajah N. who this deponent supposes had previously settled matters with Ramsoonder Bewartah, Gopeemohun's father, said, in this deponent's presence, to Ramsoonder, that he wished to take Gopeemohun away at that time, the day being an auspicious one for the purpose, to which Ramsoonder answered, that he might take Gopeemohun away whenever he pleased, as he, Ramsoonder, had given him to him; that the rajah accordingly took Gopeemohun in his arms and carried him to his own place of abode; that at the time he was about to depart he told Ramsoonder that it was his intention to celebrate the adoption in the usual manner observed

(*a*) These answers are signed by Mr. Shaw. The other widows were originally parties and put in their answers; but they ceased to be parties before the hearing.

(*b*) *Considerations* 196.

among hindoos: shortly after this, the rajah's mother died, which caused a suspension of all joyous ceremonies for one year, which prevented the ceremonies of adoption being observed: that when Gopeemohun had passed his sixth year, rajah N. made preparations for causing Gopeemohun to undergo the ceremony called *choora*, and deputed Monickchunder Deb to act on his, rajah N.'s, behalf in performing the ceremony, which he did with the assistance of Seetaram Biddyabagees an officiating priest; that some ceremonies were performed by Sitaram Terca Bagees, what they particularly were this deponent cannot recollect but understood that they were those usual on adoption; that deponent cannot speak particularly to the mode of the performance of the ceremonies, but supposes they were regularly performed, as the rajah told the priests and Monickchunder to perform the ceremonies appertaining to adoption and after them the *choora*: that defendant was present when Gopeemohun's father told rajah N. that he had given Gopeemohun to him for to adopt and that he might take him away when he pleased, which he did:

—saith that the ceremony called *choora* can only be performed once, that Gopeemohun has undergone it, that he underwent it at the late rajah N.'s and had not undergone it previously at his father Ramsoonder Deb's, that the ceremony was performed by the priests Sitaram Tercabagees and Seetaram Biddyabagees and Monickchunder Deb who acted for the late rajah N. on the occasion by his particular directions, that the deponent did not pay attention to the texts used, or what manner Gopeemohun's name was used, but supposes the priests did what was right, and that what they did was by the authority of rajah N. (*a*)

Ramneedy Doss: saith that the religious ceremonies usual on adoption did not take place immediately on rajah N.'s obtaining Gopeemohun from his parents, but were suspended, in consequence of the decease of the rajah's mother until the due time had elapsed after which rajah N. called his relatives together and a number of brahmins and pundits and adopted him (Gopeemohun) with the usual religious ceremonies, one of which is called *briddhi sraddha* which consists in making offerings to the souls of the departed ancestors, and is usual on all joyous occasions: the porohits performed the ceremony called *homa* (burnt sacrifice) and rajah N. bedecked Gopeemohun with jewels of various kinds, took him in his arms and carried him to the first wife, and told her that he had adopted Gopeemohun, as his and her son, and gave Gopeemohun

(*a*) The death of the priests and of Ramsoonder Bewarta was proved.

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into her arms: saith that previous to the ceremonies of adoption, rajah N. caused Gopeemohun to undergo the ceremonies which bear the names *chooracarana*, which consist in boring the ears and, in some families, in shaving the head, whereas in others shaving is omitted; saith that he cannot set forth the particular religious texts pronounced or religious rites observed on these occasions, that they were performed by Monick Bewarta prompted by the officiating priests; saith that the said ceremonies were performed in a lower apartment of Monick Bewarta's place of habitation, Ramsoonder Bewarta was present; that Gopeemohun was married about a year after the performance of these ceremonies, and deponent was present at the marriage which was performed by rajah N. and at his expence, with all the magnificence usual on such occasions; and deponent, as well as all the relations and the whole class (*a*), were invited by rajah N. to be present at his son's wedding; this deponent was invited by a letter in which rajah N. mentioned that the occasion was the wedding of his beloved son.

RAMBULLUB DEB: saith—that the ceremony usual on adoption was not performed immediately on rajah N.'s obtaining Gopeemohun from his parents, but sometime afterwards, on the same day and in the same place that Gopeemohun underwent the ceremony called *chooracurana* which was performed by Monickchunder Deb instructed by a porohit (officiating priest) named Seetaram Biddyabagis; the *homa* (i. e. burnt offering) was performed by Seetaram Terkobagis, and this ceremony the deponent understood to appertain to the adoption; that after it had happened the rajah bedecked Gopeemohun with jewels and accompanied by this deponent took Gopeemohun into the female apartments from whence he and deponent returned with Gopeemohun whom deponent carried in his arms to the spot where the ceremonies had been performed, and all the relations and kinsmen present made presents to Gopeemohun:

—saith that the actual adoption, meaning the gift of the child by his parents to the adoptive father rajah N. and his taking him as his

(*a*) "—rajah N. was a Hindu of the *cayestha* class, at the head of a division of *cayesthas* who had separated from the division which was under Crishnochurn Mitter, and a distant cousin to this deponent:" *Evidence of* Juggutram Deb, *manager of the family estates.* It was in proof by several witnesses, and is well known, that the family are of the tribe of Sudras called Cayesthas. That they claimed to be Vaisyas (*Considerations* 195) has not been traced in the depositions or proceedings: Note XIV.

son, did not take place in deponent's presence, but that he believes such did happen, as rajah N. caused Gopeemohun to undergo the *chooracarane*, which he would not otherwise have done, and also the *homa* to be performed after it in confirmation of the act of adoption:

—saith that it is usual and customary among hindoos and gentoos, and indispensably necessary according to their customs and usages, for every child, being a hindoo and gentoo, to perform the ceremony of *choora* or to have the same performed for him, whether he be adopted or not; that he was present when the ceremony of *choora* was performed for the complainant as a hindoo and gentoo, that he can of his own knowledge positively declare that the complainant was called Gopeemohun Deb at the performance of the said *choora*, and by that name alone, in and during the said ceremony, that he himself did hear and is certain that at the time the said ceremony of *choora* was so performed for the said complainant, the porohit or priest declared and pronounced him to be the grandson of the father of rajah N., it being a custom and usage among the hindoos, as laid down by their books of Shaster, not to take the name of the father, if he be living, at the time of the performance of ceremonies of the nature above alluded to; that the complainant was not declared nor pronounced by the said porohit as the son of Ramsoonder Deb or Ramsoonder Bewarta, that the said rajah N. was present at the performance of the said ceremony of *choora*, but this deponent cannot take upon himself to swear positively whether or no the said rajah N. heard by what name the said complainant was pronounced and declared by the said porohit, but saith, that the said rajah N. was not only present and passing and repassing in the room where the said ceremony of *choora* was so performing for Gopeemohun, but also that he had not his ears shut up, nor was he in any manner disabled from hearing what was passing about him; that it is now about twenty nine years or thereabout since the said ceremony was performed, that the complainant was upwards of five years of age, or rather six years or thereabouts old; that when the same ceremony of *choora* was so performed for the said complainant, this deponent can not exactly say whether Ramsoonder Bewarta had two sons or three sons, besides the one he had given rajah N. to adopt, but saith that he knows and well recollects the ceremony of *choora* having been performed previously for two of them, that the same was performed in the house and nearly in the same manner as for the complainant, excepting that the said rajah N. was not then in circumstances to be able to defray the expence of the said ceremonies, the expences and charges of which were accordingly defrayed by Ramsoonder Bewarta.

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KISTNOMOHUN DEB (*a*): saith that no ceremonies took place at the actual giving and receiving Gopeemohun into adoption, but took place at the same time that the *chooracurana* did; the ceremonies appertaining to adoption were performed by Sitaram Turcabagees a priest, and consisted of *homa* and other ceremonies appertaining thereto, totally distinct from those attending the *choora curane*; the ceremonies appertaining to adoption being over, rajah N. deputed Monickchunder Bewarta to act for him in causing Gopeemohun to go through the ceremonies of the *choora karane* as his, rajah N.'s son, which was performed accordingly by Monickchunder, assisted by Setaram Biddyabagees a priest; that all the family and relations were present on this occasion; that the next religious ceremony was Gopeemohun's wedding: —saith that the ceremony called *choora* is only once performed, that Gopeemohun underwent it at rajah N.'s and not at his natural father Ramsoonder Bewarta's, that Gopeemohun was called the son of rajah N. and was looked upon as such by all present, and he, as the father of Gopeemohun, deputed Monickchund to perform the ceremonies attending the *choora*, consisting of the *briddhi sraddhs*, &c.

NEEMNARAIN BOSE (*b*)—saith that he cannot tell that it was at the place or apartments now occupied by Monickcnunder Bewarta and formerly by the said rajah N., that the said rajah N. performed or caused to be performed the ceremonies called *homa barreith homa* and *choora* in order to complete his adoption of the said Gopeemohun Deb as his son, although he knows such ceremonies did actually take place somewhere; that he knows Kissenmohun Deb, Birjomohun Deb, Gopeekistno Deb, Goluckmohun Deb and Bobunmohun Deb nephews of the said rajah N. respectively, that he does not recollect to have been present at the performance of the ceremony of *choora* for either of them, and therefore cannot tell whether they were under or above the age of five years when the said ceremony of *choora* was performed for them, but saith that the general custom of performing the religions ceremony of *choora* in the family of the said rajah N. and his said brothers, as well as in the families of all hindoos, is, to perform or cause it to be performed when their children are of an age between five and seven years.

—saith that to the best of his knowledge and information, he is not aware of any reason, cause or circumstance, that should have rendered the said Gopeemohun incapable of being adopted as a son by the said rajah N. who, he makes no doubt, took proper care to be certified as

(*a*) plaintiff's natural brother. and in his service as cash keeper
(*b*) brother in law to rajah N. for 18 years.

to this essential point by persons duly qualified to afford him the requisite information (but whose names this deponent does not know nor can he tell) before he adopted complainant as his son.

RAMJOY GHOSE; saith that he heard the late rajah N., before the birth of Rajcrishna, declare that he had taken Gopeemohun Deb as his son, and that his regard for him was very great, that he does not recollect who was present on this occasion, which occurred one day when the rajah was playing with Gopeemohun then a child; that some time after this, the late rajah invited all his relations and came in person himself to invite this deponent and his family among the rest, to be present at the religious ceremonies attending the adoption of Gopeemohun as his son; that on this occasion the usual ceremonies were performed to the best of this deponent's knowledge and belief, as was the opinion of all present, who, as is usual, made offerings to the infant Gopeemohun as the adopted son of rajah N. that this deponent presented five rupees on this occasion; that deponent cannot state on what particular occasion, or in whose presence in particular rajah N. introduced Gopeemohun as his son, or called him so, but that he did so on all occasions and treated him as such in point of care, education and so on, and continued to do so after the birth of Rajcrishna, until fondness for the defendant Suckey Dossey caused a diminution in his love for Gopeemohun, since which he gradually ceased to shew the very great attachment towards him he was wont to do.

RAMNEEDY BONNERJEAH (*a*): saith that he cannot take upon himself to swear positively as to the age of Gopeemohun Deb, but saith, that, since the existence of the present disputes between the said Gopeemohun Deb and the said Rajkrishna, he has made enquiry and discovered, that he the said Gopeemohun was born in the month of Choitra 1170 B. S. at which time both this deponent and the said rajah N. were at Ghirretty, and that the ceremonies of *choora* were performed for him in the month of Maug when he was about seven years of age. —saith that he knew of no reason or cause that should render Gopeemohun incapable of being adopted by the said rajah N. as his son, at that time, but saith, that he has since, lately, been told, that if a person adopts a child as his own, before it has attained to the age of five years, it is to be preferred, but that still the customs and usages of the hindus do not prohibit persons from adopting children that have passed their fifth

(*a*) a brahmin gomastah of the employ of the family for 36 years. defendant Rajcrishna, and in the

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years; that he was in Calcutta but not present at the *choora* of Gopeemohun, and cannot say whether or not the said rajah did perform or caused to be performed all the rites and ceremonies essential to completing and rendering valid by the laws and usages of the hindus the adoption of Gopeemohun as his son, but saith that he has no doubt rajah N. took proper advice from persons duly qualified to afford him the necessary information before he adopted Gopeemohun, which he has been given to understand was actually the case.

Radacant Surmonah, an aged pundit of the Sudder Dewany Adalut, examined for the defendants, deposes: —that he does not know what ceremonies were performed at the adoption of Gopeemohun Deb; that he has heard Gopeemohun was adopted by rajah Nobkissen, but does not know of his own knowledge whether he was or not; that the ceremony of *juggy* is necessary in adoption, and that it cannot be performed after the person intended for adoption has attained the age of five years.—

It was proved, that plaintiff conducted himself upon the decease of the rajah, which occurred in October 1797, consistently with his relation by adoption and as no other than a son would do (*a*); and further, that his duties and

(*a*) Radacaunt Surmonah thus states the law or custom:

—it is usual and customary and ordained by the laws customs and usages of hindus when a *cayestha* by cast dies and leaves more than one male issue, for his eldest son to light his funeral pile; that the eldest son is required to perform the ceremonies called *sradd* and to make the offerings called *pinda* for the whole of the first year next after his father's decease; and that, at the expiration of thirty days after the death of a father it is usual for all his sons to leave off mourning, and it is then required of them to perform the ceremonies called *daun ootshurgo* and *burshu ootshurgo* for the death of their father; that at the annual performance of the ceremonies of the *sradd* after the first year, all the sons indiscriminately are required to join in performing and celebrating the ceremonies attending the same without any distinction or difference; that if a *cayestha* having no male issue of his own body adopts a son and

privileges in the family of his natural father had altogether ceased from the date of his being given to the rajah. The actual gift and taking are thus deposed to: *Hindu Law*

KISTNOMOHUN DEB:—saith that he knoweth that the late rajah N. did make application to Ramsoonder Bewarta about the plaintiff Gopeemohun, and that he did so in deponent's presence, several different times verbally, and desired this deponent to urge Ramsoonder Bewarta to consent to his request; that the nature of the application was a request that he, Ramsoonder Bewarta, and his wife would give their son Gopeemohun, the plaintiff, unto him, rajah N., and his first wife, to adopt as their son, they having no male issue at the time of the said application; that the terms agreed upon were, that Gopeemohun should receive rajah N.'s whole estate if he had not male issue born at all after that period, and that Gopeemohun should observe full mourning, which lasts thirty days and nights; that this happened, as this deponent believes, about thirty or thirty one years ago; that there were several different persons present at the different applications made, particularly those of the family, to all of whom the circumstance was well known; that this deponent remembers Monickchund Deb, Rambullub Deb, Binodram Deb and several others to have been present: —saith that when rajah N. was about to take Gopeemohun from his parents, his father observed to rajah N. that although he had no issue then, he might so, and that it would

afterwards gets one or more male issue, the son so adopted is by the hindu laws and usages next in rank to those begotten of his own body, and does accordingly give way to them at the performance or observance of all ceremonies religious or otherwise after the death of the father."

This witness also deposes:

—that according to the Hindu religious notion or doctrine a Hindu dying without male issue will not be doomed to the *poonam nurruck* if he has a nephew or nephews being the son or sons of a brother; that having such nephew or nephews does exempt him, according to the established religious persuasion and belief among Hindus, from any purgatory or punishment after death: that the learned think the disgrace of childlessness removed if the brother of the childless person has issue, but that the unlearned think other wise, and that in every other respect a man whose brother has a son is considered as free from all unfavourable consequences as if he had a son himself."

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be well to prearrange how Gopeemohun was to fare if male issue of his own body should be born; that rajah N. thereon agreed that if a son was born to him, Gopeemohun should share his estate equally with the said son, and that should he not have male issue, Gopeemohun should receive the whole; that this was repeated in the presence of Roghoo Mitter and Casheenauth Baboo, a dispute having happened between Gopeemohnn's father Ramsoonder and rajah N. in which Ramsoonder took away Gopeemohun but was caused to restore him by Roghoomitter and Casheenauth who interfered at the request of rajah N.; that Ramsoonder observed to rajah N., that his first wife was then pregnant and likely to bear a son to him and that he had also other wives likely to bear children after the birth of whom Gopeemohun would not be so great a favorite; to which rajah N. answered, that if his pregnant wife or any wife bore him a son, Gopeemohun should share his estate equally with that son, and that if his wives bore daughters the whole estate would go to Gopeemohun.

Plaintiff's counsel tendered the draft of the writing alleged by the bill to have been executed by the rajah, "as additional evidence of the agreement made at the time of adoption as well as of the adoption itself."

THE COURT (*a*) after argument decided, "that if any agreement took place at the time of the alleged adoption, it was reduced into the shape of a regular deed executed by rajah N. of which this exhibit is said to be the draft; and as the Court are of opinion that there has not been sufficient evidence of the loss of that deed, the draft cannot now be read." (*b*)

(*a*) Anstruther *Bart.* C. J., Royds and Russell Js.

(*b*) Heeramonee Dossee, the rajah's eldest widow, thus deposes: —the late rajah N. did bring two paper writings into the inner apartments and gave them to this deponent, directing her to take them to Gopeemohun, that he might compare the fair copy with the draft; that this deponent did so, and Gopeemohun perused the papers in this deponent's presence and gave them to her to take care of; for which purpose this deponent put them in her chest; that this deponent showed the fair copy to her brother Ram-

The will was put in for the defence: Mr. Francis Gladwin (*a*) thus describes its preparation and execution:

—that the said rajah N. did on or about the second day of Joystee in the year 1198 B. S. answering to the thirteenth day of May A. X. 1791, sign, seal, publish and declare his last will and testa-

narayan Ghose and he read it and said, that rajah N. had thereby given one half of his estate to Gopeemohun, and one half to Rajcrishna; after which this deponent returned the said writing to her chest, that this deponent never showed any other writing to her brother Ramnarayan: that after the decease of the late rajah, Gopeemohun asked this deponent for the said paper, but on searching the chest, it was not to be found, that this deponent also caused the chest to be further searched by Gopeemohun Deb without effect."

The widow Belass Dossee deposes: —the late rajah N. brought two papers into the inner apartments, and gave them to the elder rany Heeramonee Dossey, and said, that he had given half of his estate thereby to Gopeemohun, and told her to give them to Gopeemohun, which she did, and Gopeemohun, after reading them, delivered them again to her, desiring her to take care of them; that this passed in deponent's presence and hearing; that she does not recollect further particulars, as a long time has since elapsed, nor does she know what has become of the writings."

The widow Khunjunnee Dossee deposes: —after the late rajah N. had given by writing one half of his estate to Gopeemohun and one half to Rajcrishna, he asked this deponent whether she had heard of the circumstance, and what her opinion was thereon; upon which this deponent answered that she had not formed any particular opinion, as she thought he might dispose of his property as he pleased, and that to this the rajah replied, saying,—this is your answer, Rajcrishna's mother is all fire with me."

One Hurrypreah Dossee, a very aged witness, deposes: —about one year after the birth of the defendant Rajcrishna Deb, rajah N. brought two written papers into the inner apartments and in this deponent's presence gave them to Heeramoney Dossee and said—by these writings I have given the moiety of my whole estate to Gopeemohun and the remaining half to Rajcrishna, take the foul draft and fair copy to Gopeemohun, and let him compare them: Heeramoney did so, but where the writings now are this deponent cannot say."

(*a*) then 51 years old.

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ment in writing in the presence and sight of this deponent; and that the will or writing now produced and shown to him is the same identical will which he, the said rajah N. so signed sealed published and executed as and for his last will and testament; that at the time he the said rajah N. so signed sealed published and executed the said will, this deponent, at his request and desire, did subscribe and set his name thereto as a witness, in the presence of the said rajah N. and that the name of this deponent as subscribed and set to the said will or writing is of his own proper handwriting; that the three names written in the bengally characters as witnesses to the said will or writing were also written in the presence of this deponent;

—that the said will or writing was truly and faithfully explained by this deponent to the party executing the same, that he did know and was fully acquainted with the contents and particulars thereof previous to his executing the same, the said will or writing having been drawn out by the late Mr. Davies a barrister at law and afterwards written by this deponent, at the particular desire and especial request of him the said rajah N. according to his own instructions; that the same was explained in both the english and persian languages, of which said languages he the said rajah N. as well as this deponent had both a sufficient knowledge; that the said rajah N. at the time of his signing, sealing, publishing and executing the said will or writing, was of good and sufficient sound mind, memory and understanding for making his will, and to the best of this deponent's knowledge and belief in no wise incapacitated for disposing of his estate or affairs.

—saith he is acquainted with the adopted son of rajah N. whose name is Gopeemohun Deb, and further this deponent cannot depose to this interrogatory than that at the time the said rajah N. was about making his last will and testament he gave this dept. to understand that he considered the will as setting aside the adoption.

—during the lifetime of the said rajah N. he the said Gopeemohun Deb attempted several times to enter into conversation with this dept. and to obtain from him the requisite information relative to the will, but dept. always waived the subject by reason that he the said rajah N. at the time of making the said will had desired him not to mention the circumstance to any one, and in compliance therewith he (this dept.) never divulged the secret to any one during the lifetime of the said rajah N.

Sheebnarain Holdar and others of plaintiff's witnesses prove that the rajah had the will read and explained to

plaintiff, upon his asking to see it; this was in Shrabun 1198 B. S. *Hindu Law*

The following is an abstract of the will: The rajah states his object to be, to avoid misunderstanding or disputes amongst his wives, children or relations: he asserts that the whole of his property is self acquired and that he has full power to bequeath it as he pleases, and that his brothers or their children have no claim upon it: he states that he has sufficiently provided for his wives: he gives to plaintiff, whom he describes "the son of my eldest brother Ramsoonder Deb," *in trust* for himself and his brothers and his and their heirs, certain landed property including testator's share of a talook *belonging to his late father;* testator's brother Monickchund Deb and his family, also his two sisters and their families are to be entitled to occupy their respective apartments: he gives annuities, for 50 years, to plaintiff's four brothers, to Monickchund Deb, to the wife of plaintiff and to testator's brothers in law: he gives legacies to his daughters: he directs the erection of a pagoda, and makes provision for preserving thakoor barees and pujahs under the management of the defendant Rajcristna and his heirs, exclusive of testator's brothers or their children: he gives a conditional legacy to plaintiff, viz. in the event of one of testator's wives dividing between plaintiff and Rajecristna certain jewels which the testator had deposited with her(*a*): plaintiff and the other legatees or their respective heirs to forfeit all right under the will respectively in case of making any claim upon Rajcristna for more than is bequeathed by the will: Rajcristna is appointed sole executor and residuary legatee, subject to the maintenance of his mother and of the three other surviving wives of testator (*b*).

(*a*) It appears from the depositions that the wife here designated is Bowanny Dossee: the division or gift of jewels is not proved.

(*b*) The will is published in extenso infra, Note XIV.

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Judgment (*a*) was given on the 17th April, when the following decretal order is dated:

"THIS COURT doth think fit to order decree and declare and doth accordingly order decree and declare Gopeemohun Deb the complainant abovenamed to be the adopted son of rajah Nobkissen now deceased in the pleadings in this cause mentioned and that as such he the said Gopeemohun Deb is entitled to all and every the rights priviledges and advantages whatsoever of an adopted son according to the laws customs and usages of Hindoos. And it is further ordered that three several issues be directed and the same are hereby directed accordingly to try;

First. Whether at the time of the adoption of the said complainant Gopeemohun Deb or afterwards and when any and what agreement was entered into by the said rajah Nobkissen in his lifetime for making a provision for his said adopted son?

Secondly. Whether any and what instrument in writing was made and entered into by the said rajah Nobkissen for the making of such provision or relative thereto? and,

Thirdly. Whether if such instrument was made and entered into the same is or has been lost?

(*a*) The editor has hitherto been unsuccessful in his enquiries for the elaborate judgment delivered by Sir John Anstruther (Strange H. L. vol. 1, p. 96), but hopes to be able to publish it in the Note to this case.

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> And it is ordered that in the actions at law to be brought on the plea side of this Court for the trial of such three several issues the present complainant Gopeemohun Deb be plaintiff and the present defendants Rajkissen and Suckee Dossee be defendants. And whereas it appears unto this Court that several persons who may be necessary witnesses at the trial of the above issues are Hindoo women of rank who by the usages of the Hindoos cannot without disgrace appear in public to be examined vivâ voce in Court. It is hereby further ordered that a commission do issue out of and under the seal of this Court from the equity side thereof to take the examination of such women upon interrogatories to be filed for that purpose and that their answers to the same be read in evidence upon the trial of the above directed issues saving all just exceptions. And it is lastly ordered that the consideration of costs and of all further directions be reserved until after the trial of the said issues which is hereby ordered to be in the course of the next ensuing Term."

Upon the 16th June 1800, plaintiff dismissed his own bill with costs as against Suckee Dossee, and on the same day the cause was called on for further directions and a decree made, by consent: viz.

> "THIS COURT doth think fit to order and decree and doth accordingly order and decree that so much and

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such parts of the said interlocutory or decretal order of the 17th day of April last as respects the several issues thereby directed and the trials thereof be discharged and the same is and are hereby discharged accordingly. And this Court doth hereby further order and decree that Gopeemohun Deb the complainant and rajah Rajcrishna Deb the defendant in this cause do take enter upon and possess the whole estate and property real and personal of which the said rajah Nobkissen died seized possessed of or entitled unto between them share and share alike as tenants in common subject nevertheless to all the provisions made by the last will and testament of the said rajah Nobkissen except only as to those provisions in the said last will and testament which respect the complainant Gopeemohun Deb and the defendant rajah Rajcrishna Deb. And further that each party complainant and defendant do pay his own several and respective costs of suit by him incurred in this cause." *(a)*

(*a*) The terms of this decree were settled and handed in by the parties; the interference or sanction of the Court therefore was merely formal.

This amicable arrangement of the family dispute was not effectual. Gopeemohun again filed his bill against his brother, praying for a commission of partition of the realty and an account of the personalty, also—"that the said rajah Rajcristna be further decreed to pay one moiety or half share of all the provisions legacies and bequests made or given to others than the complainant and the said rajah Rajcristna by

SREEMOTY MONDODARRY DABY *v.* JOYNARAIN PUCKRASSEY. (1800-1-3)

COWSOOLAH DABY *v.* JOYNARAIN PUCKRASSEY. (1803)

Hindu Law

Widow's maintenance.

Rupees 280 per month adjudged a proper allowance for the eldest of two widows of a brahmin banian whose heir succeeded to a fortune of three lacs.

Allowance directed to be secured by purchase of Co. paper in name of Acct. Gl.

Injunction to restrain heir from selling or disposing until arrears paid and annuity provided for.

In a subsequent suit by the younger widow, an allowance of Rs. 40 per month decreed to her. (*b*)

BILL filed in the first cause April 1799 by the eldest of two widows of Tilluckram Puckrassey a Hindu native of Bengal (*a*) against his son, praying that defendant—"may set forth a full true and perfect account of the property of which the said Tilluckram died possessed and the last will and testament of the said rajah Nobkissen the complainant hereby offering and consenting to a decree that he pay the other moiety or half part thereof upon the said rajah Rajcristna paying and delivering to him his aforesaid moiety of the personal property of the said rajah N. and of the rents and profits of the real or fixed and landed estate realized by him since the death of the said rajah N." In this suit the defendant disputed the consent given in the first suit. Voluminous evidence was gone into, and the suit brought to a hearing in April 1802, when the Court decreed the right of plaintiff and defendant respectively to equal shares of the estate "under and by virtue of the aforesaid decree made by the Court on the 16th June 1800"; which last mentioned decree is accordingly carried out by a commission of partition to Messrs. Thos. Scott and W. C. Blaquiere and by a reference for an account of the personalty. Another commission was afterwards issued to Messrs. Lloyd and Blaquiere, to complete the partition of realty, also to ascertain the value of and to allot to each of the disputants "one moiety or equal part share or proportion of the idols and of the property belonging thereto and of the manuscript books in the Shanscrit language of and belonging to the estate of the said rajah N. dec." This last commission was returned executed in June 1803; the Master's report was confirmed and further directions given in July 1806: the latter were, "that defendant do pay to complainant within one month from this day the sum of Sa. Rs. 55,460-2-4½ and that each party do pay their own costs."

(*a*) It appears in the depositions that he was a brahmin, and by calling a banian.

(*b*) See proceeding referred to supra p. 379, no. *(b)*; also Note XV.

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that he may be compelled by a decree of this hon'ble Court to pay your oratrix a maintenance proportioned to the same and to place out a certain sum at interest in Company's securities and ordered to deposit the same in the hands of such person as your Ldps. may think fit and proper to take charge of the same and to pay your oratrix a reasonable annuity or allowance out of the interest produced thereby or that your oratrix may be secured her allowance or annuity in such other manner as your Ldps. may deem reasonable but in such a manner as may be effectual for the purpose of securing to your oratrix the due payment of your oratrix's allowance and maintenance." (*a*)

Plaintiff estimates her husband's property at three lacs of rupees.

The defendant, by answer, denies plaintiff's right to call for an account, and insists "that the widow of a hindoo has only a right to a maintenance from the son and heir of her deceased husband according to the general circumstances in life of her deceased husband and the provision made for her during her husband's life and not in the proportion to the amount of his property or of his wealth to no specific part or portion of which is she by the hindoo laws and usages as this defendant further insists entitled." He admits his ability to afford plaintiff such maintenance as she is entitled to. He describes, upon information and belief, a gift by Tilluckram Puckrassey of Rs. 10,000 Company's paper, a few days before his decease and during his last sickness, to plaintiff, and receipt of it by her in lieu of all claim upon his estate, she being already possessed of jewels, ornaments and household furniture to the amount of Sa. Rs. 4,000; all which defendant contends is a sufficient allowance

(*a*) The bill is signed by Mr. (afterwards Sir Francis) Macnaghten, who states (*Considerations* 60) that this was the first proceeding of the sort had in the Supreme Court.

"not in the proportion to the amount of the estate of the said Tilluckram Puckrassey but to his general circumstances and situation in life and the situation and condition of and provision made for the said complt. during the life of the said T. P. as well for her maintenance and support as for the performance of all such religious rites and ceremonies as by the laws and usages of the hindoos it is requisite and necessary for her to perform and keep." He insists that he is not bound, as the stepson of plaintiff, who has already sufficient property of her own, to maintain her. He states that her husband in his lifetime made her a monthly allowance of Sa. Rs. 10, as. 5, p. 3 for her maintenance, and he submits that if plaintiff be entitled to receive maintenance from him (defendant) it should not exceed that sum. Defendant denies the estimate of property to be correct, but "for the sake of aiding the complt. in obtaining a decision in this cause and for no other purpose admits that the said property and estate so descended to him this defendant amounted and does amount to the said sum in the said complt's bill of complaint mentioned." Defendant expresses his readiness to account before the Master, denies that he had or has any intent to disturb plaintiff in her occupation of the family house. He admits "that the widows of hindoos are by the laws usages and customs of gentoos or hindoos entitled to a maintenance out of their deceased husband's estate and this defendant does not know but supposes that such maintenance must bear some although to what exact proportion this defendant cannot say to the amount of the estate of their deceased husband but that such proportion is as ascertained by their husband in his lifetime and conformable to their maintenance from him but this defendant saith he is advised and believes that by the same laws if a hindoo husband in his lifetime gives his wife as the said T. P.

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in his lifetime did to the said complt. a competency to live on according to her rank and for the express purpose that the rest of his estate may descend to his only son and heir that the widow has no claim for a maintenance from such son." (*a*)

The depositions prove; the gift of Rs. 10,000 Co. paper to plaintiff by her husband for her own use (*b*) a few days before his decease, she having previously received from him jewels and furniture to the value of two or three thousand rupees—that plaintiff had quitted the family house, for what cause or under what pretence does not appear—that a day or two preceding his decease Tilluckram Puckrassey declared, he had made a settlement for Ramchunder Takoor (*c*) and for this plaintiff also for her daughter, and had left to defendant sufficient to maintain him. One Ram Bhandarry, a servant of Tilluckram, deposes, that the allowance made to plaintiff by her husband consisted of rice, ghee, brown sugar, vegetables, fish, beetle, beetle nuts, oil, salt, pots, wood, milk, plaintains for pujah, plaintains for her own use and the yearly fruits, also two rupees per month for her clothes; he also states that defendant continued the same allowance until plaintiff refused to receive it. Other witnesses speak in general terms, to the same effect, of the allowance. Tilluckram Sircar an aged cayestha witness and friend of the family deposes "—— by the hindoo laws if the deceased leaves male issue his wife or wives are entitled to nothing but daily allowance of diet and clothing: that he knows this from many other instances in which hindoos have died leaving sons and a widow." There is no more definite evidence to this point in the depositions.

(*a*) signed by Mr. Strettell.

(*b*) It was indorsed by his direction (in Bengaly) "My wife Sreemoty Mundodarry Daby I with my free will give you this paper."

(*c*) explained in the depositions "a wooden image"—*Qu.* the family idol.

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At the first hearing, on the 26th Nov. 1800, it was referred to the Master to "enquire and ascertain what would be a proper and suitable maintenance (the circumstances of the parties complainant and defendant being duly adverted to and considered) to be made to Sree Motee Mondodarry Daby the complainant as one and the eldest of the widows of Tilluckram Puckrassey dec."

The Master by his report, dated 27th Feb. 1801, after reciting that he had been attended by the solicitors on both sides "and by the pundits of this Court learned in the hindoo law" found Sa. Rs. 280 per month to be "a proper and suitable allowance to the said Sree Motee Mondodarry Daby (the estate of the said parties being adverted to) as well for her own maintenance and support as to enable her to defray the expences incumbent on her to disburse on account of gifts to her own relations in indigent circumstances, presents to her spiritual teacher, gifts to virtuous brahamins and to officiating priests, charity to the poor, sums necessary for the religious ceremonies requisite according to the hindoos to be performed daily for the benefit of her late husband's soul and her own as well as for religious bequests, for the reception of guests, for servants' wages and for pilgrimages to holy places."

On the 9th March the report was confirmed without opposition.

The cause came on for further directions on the 23rd March, "whereupon and upon reading on the part of the complainant the aforesaid report of the said Master Scott and upon hearing the counsel for the complainant no one appearing for the defendant"—

THE COURT (*a*) decreed and declared: that the complt. Sree Motee Mondo-

(*a*) Anstruther *Bart.* C. J., Royds and Russell Js.

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darry Daby is entitled to an annuity of Sa. Rs. 280 per month from the day of the death of her husband T. P. And therefore it is ordered and decreed that the deft. J. P. do forthwith pay to the complt. the sum of Sa. Rs. 15,120 being the amount of such annuity accrued and grown due from the day of the death of her said husband to the sixth day of this present month of March being four years and six months. And it is further ordered and decreed that the said deft. J. P. do also forthwith pay into the hands of the Acct. Gl. of this Court a sum of money sufficient to raise an annuity equal to the payment of the sum of Sa. Rs. 280 per month from the day of the date of this decree and that the Acct. Gl. do lay out such sum of money in the purchase of Co. paper the interest thereof to be paid to the complt. Sree Motee Mondodarry Daby during her life time and from and immediately after her decease the said principal sum and the security or securities in which the same shall be then vested shall revert to and be paid and made over to the said deft. J. P. and that the said deft. be at liberty to make such application to this Court on the death of the complt. as he may find necessary or be advised. And it is further ordered and decreed that an injunction do issue out of and under the seal of this Court to restrain the said deft. from selling or otherwise

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disposing of the estates real or personal which were of and belonging to the said T. P. until the above mentioned sum of Sa. Rs. 15,120 and the afsd. annuity are both fully provided for. And it is lastly ordered and decreed that the deft. do pay to the complt. the costs of this suit to be taxed by one of the Masters of this Court."

In Sept. 1801, the younger widow, Cowsoolah Daby, filed her bill against her own son Joynarain Packrassey. In March 1802 this bill was taken pro confesso (*a*).

In April 1802, the decree in the first suit having proved ineffectual, Mondodarry Daby again filed her bill, praying that the lands of Tilluckram Packrassey be sold to satisfy her demand. The bill was taken pro confesso, and upon the hearing exparte, 8th July 1802, the Master was directed to take an account of so much of the lands and heredits. of T. P. as should be sufficient to satisfy the decree of 23rd March 1801, and to sell the same and pay the proceeds to the Acct. Gl. The Master accordingly took the account in presence of the solicitors of the parties.

The suit of Cowsoolah Daby was heard on the 14th July 1802, exparte, when it was declared and ordered:

That the said complt. Cowsoolah Daby is well entitled to a maintenance out of the estate which was of Tilluckram Packrassey her late husband and which has come to the hands of the said defendant Joynarain Packrassey And it is further ordered and decreed that it be referred to Thos. Scott, Esq. master

(*a*) The bill has not been found amongst the records.

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of this Court to enquire and ascertain what is a proper and suitable maintenance to be made to one of the widows of T. P. deceased and that the said Master do also report if there is any thing now due and owing to the complt. for the arrears of such maintenance.

The report was made, finding Sa. Rs. 40 per month to be a proper allowance for Cowsoolah Daby (*a*).

On the 30th June 1803 an order was obtained that the two causes come in together for further directions. At that hearing another reference was directed "upon hearing the advocates on both sides" to ascertain the sums requisite "to raise the annuities due to the respective widows of the said T. P." also the deficiency of the funds in hand after paying the arrears and costs. The Master reported "— it will require the principal sum of Sa. Rs. 42,000 to be laid out in Co.'s securities bearing an interest of eight per cent. per annum to raise the monthly allowance to be paid to the complt. S. M. D. and that it will require the pl. sum of Sa. Rs. 6000 to be laid out in the like securities to raise the monthly sum of Sa. Rs. 40 being the amount of the monthly allowance to be paid to the complt. C. D." The deficiency was reported at Sa. Rs. 39,428.

The following are the minutes of the final decree, on the 11th July 1803, made upon reading the Master's reports, in both causes:

THE COURT (*b*) in consideration of the second widow being entitled to a maintenance out of the estate,

(*a*) This report has not been found. There is a curious affidavit in the Master's office on behalf of Cowsoolah Daby, making her claim amount to Rs. 219 per month: Note XV.

(*b*) Anstruther *Bart.* C. J., Royds and Russell, Js.

declare, that the sum to be paid to her be charged upon and payable out of the annuity of Rs. 280 directed to be raised for Mondodarry Daby by order of this Court of the &c. That the Master do lay out the balance in his hands of Sa. Rs. 8571 for the purpose of raising the said annuities; and that he do proceed to sell the talook (lot 15) claimed as the separate property of Joynarain, for the purpose of satisfying, as far as the same will extend, what may be deficient in the amount of the said annuities; and that the produce thereof be laid out as above directed: and if the same shall not be sufficient to raise the said annuities, that J. P. do pay into Court such sum as may be necessary for raising what may be deficient or that he otherwise secure the payment of such deficiency in the annuities to the satisfaction of the Master. *Hindu Law*

On the 18th July, the minutes were amended (in the first cause) by introducing the following, viz.

That, upon securing to Cowsoolah Daby the payment of her annuity of Sa. Rs. 40 per month, E. Lloyd, Esq. (the Master) do pay over to the complt. (i. e. Mondodarry Daby) the sum of Sa. Rs. 6,309-5-1, being the arrears due to her, from the 23rd March 1801 to 21st Jany. 1803, being 1 year 10 months 16 days *(a)*.

(*a*) The terms of the decree itself were; "——and accordingly It is ordered and decreed that E. L. Esq. the Master of this Court do forthwith out of the gross amount sales of the estate of the said Tilluckram Packrassey pay and discharge the several sums of money due from the said estate as appears by the said Master's report of the said 9th day of July last for costs of suit and other charges amounting together to the sum of Sa. Rs. 61,838-9-8. And it is further ordered and decreed in consideration of Cowsoolah Daby the second widow of the said deceased being entitled to a maintenance out of the estate of the said Tilluckram Packrassey dec. of Sa. Rs. 40 as decreed to be paid to her by order of this Court bearing date the 24th day of Jan-

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uary last that the said Master do forthwith out of the balance remaining in his hands (after satisfying the afsd. sums so reported due) and which will amount as appears by his said report to the sum of Sa. Rs. 8,571 lay out a sum of money sufficient to raise the said annuity so directed to be raised for the said Cowsoolah Daby. And it is also ordered and decreed that the said Master do forthwith proceed to sell the talook, Lot 15, claimed as the separate property of the said Joynarain Packrassey to the highest bidder and for the most money that can be had or gotten for the same and execute all proper conveyances to the purchaser of the said talook and out of such sum and sums of money as shall be raised by such sale as afsd. together with the balance which shall remain of the said sum of Sa. Rs. 8,571 after securing the said annuity of Sa. Rs. 40 per month to the said Cowsoolah Daby pay into the hands of the said Sree Motee Mondodarry Daby the sum of Sa. Rs. 6,309-5-11 in discharge of the arrears of her annuity of Sa. Rs. 280 per month due to her from the 20th day of March 1801 to the 21st day of January 1803 and after payment of the said arrears the balance remaining if any shall be laid out in the manner directed by the order of this Court of the 23rd day of March 1801 towards raising the said last mentioned annuity as far as the same will extend. And also it is ordered and decreed that the said Joynarain Packrassey do forthwith pay into the hands of the Accountant General of this Court such sum of money as may be necessary to complete and make good what may be deficient for raising the said annuity for the said Sree Motee Mondodarry Daby or that the said Joynarain Packrassey do otherwise secure the payment of such deficiency to the satisfaction of the said Master. And it is lastly ordered and decreed that all parties be at liberty to apply to this Court concerning the application of monies received or to be received to the credit of this cause as they or either of them shall from time to time be advised and therefore that the same be subject to such orders as this Court shall make concerning the same."

In *Oojul Munnee Dasee* v. *Jygopal Chowdhree* S. D. A. Dec. 1848 p. 491, the Sudder Court held, that a voluntary separation by a widow from her husband's family was a bar to a suit for maintenance. One of the judges was dissentient, because he considered the separation, under the circumstances, not wilful. The judgment of the latter (Mr. Jackson) explains the principle upon which the Courts now estimate allowance to widows, viz. "such as will enable them to live in a manner becoming the position in life which they occupy, such as will ensure them comfort and respectful treatment."

RAJEKISSORE SEAT BY HIS NEXT FRIEND RAMGOVIND BYSACK *v.* SREE MOOTEE TONOOMONEY RAUR AND SREE MOOTEE. (1801)

Hindu Law

Widow of undivided brother. Managers' accounts.

One of two undivided brethren dying, and leaving an infant son, the survivor manages. The latter dying, his widow manages.

Suit by the infant, for an account and delivery up of the estate to a guardian of his own choice. The widow, by answer, insists on her right, as heir, to a moiety; but submits to account. Upon reference of the account, the Master is directed to report, (int. al.) what is a proper allowance for maintenance and support of the

THE final decree in this cause, dated 2nd July 1801, is as follows:

THIS CAUSE coming on this day for the further directions of this Court (*a*) on the Master's report, the substance of the complt.'s bill appeared to be; That complt's grandfather Luckicaunt Seat, a hindoo of the province of Bengal and an inhabitant of the town of Calcutta, departed this life some time A. X. 1758, leaving issue two sons, Nobkissore Seat and Goculkissore Seat, the first of whom was the father of the complt. but who are both since deceased: that Luckicaunt Seat died possessed of property, real and personal, to a very considerable amount; and upon his death, Goculkissore Seat and Nobkissore Seat were, by the laws and customs of the hindoos, entitled to all and singular the goods and chattels, rights, credits and effects which he died possessed of and entitled unto: that at the death of Luckicaunt Seat, Nobkissore Seat and Gocul-

(*a*) Anstruther *Bart.* C. J., Royds and Russell Js.

deft., the widow of plaintiff's uncle; who is restrained, by injunction, from receipt of rents, &c. The Master reports, (int. al.) that the defendant refuses to lay before him any statement as to her allowance, she claiming the ownership of a moiety as her hushand's heir. Report confirmed, by consent. At the hearing for further directions, there is a reference, to complete the account; the Master being directed to divide the estate, as it stands, into two parts, with one of which the widow is to be debited, as well as with some short credits (reported by the Master) during her husband's management.

The Master reports, (int. al.) the amount of the estate found by his last report, adding, *to a moiety of which he finds plaintiff entitled;* and he finds plaintiff's title to a moiety of the subsequent receipts, in the same form. Report confirmed, on plaintiff's motion. At the final hearing,—defendant is decreed to pay the amount found due from her, as the moiety of the estate in her hands; receivers appointed in the suit are discharged, and possession of the estates ordered to be delivered *to the owners thereof;* each party to pay their own costs.

At the original hearing, an enquiry was directed as to allowance to plaintiff's mother, a defendant. This was found by the Master, but not made the subject of direction in the decree. Plaintiff ordered to pay his mother's costs.

The Master reported, that no accounts of the several managers, from the death of plaintiff's grandfather to the death of his uncle, had been produced, because sworn to be destroyed by vermin. *S. C. Records.*

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kissore Seat, being infants, were incapable of taking upon themselves the charge of his estate; in consequence whereof all the property real and personal was taken possession of by Sree Mootee Jasodah his widow, and was conducted and managed by agents under her direction from that time until A. X. 1769. That some time in the Bengal year 1174 the said Sree Mootee Jasodah caused an account of the real and personal estate of her deceased husband Luckicaunt Seat to be taken, which at that time amounted in value to the sum of Ct. Rs. 82,243; as by schedule A, which also contains the particulars of what the estate then consisted, which schedule A complt. prays may be taken as part and parcel of his bill. That Sree Mootee Jasodah departed this life some time in 1769, and upon her death Goculkissore Seat, being then of the age of twenty years and the eldest son of Luckicaunt Seat, took charge of the whole of the property real and personal, consisting of plate, jewels, household furniture, shawls, piece goods of various kinds but in particular of the several debts, houses, lands, property and effects in schedule A, and continued to manage the same for the benefit of himself and complt.'s father until the time of the death of the latter, who died A. X. 1789 leaving a widow by name Sree Mootee, one other of the defts. who is an inhabitant of Calcutta and therefore subject to the jurisdiction of this Court, together with complt. his only son, him surviving. That upon the death of complt.'s said father complt. by the laws and customs of the hindoos became entitled to all the property real and personal of his said father, and that the deft. Sree Mootee is only entitled to a maintenance for life therefrom. That Goculkissore Seat continued in the management of the estate for the benefit of himself and complt. from the time of the death of complt.'s father until the eighteenth day of August 1792 when he also died, leaving his widow Sree Mootee Tonoomoney Raur him surviving who is also

an inhabitant of Calcutta and therefore subject to the jurisdiction of this Court. That upon the death of Goculkissore Seat, Sree Mootee Tonoomoney Raur possessed herself of the whole of the joint property, the complt. being an infant and unable to take charge thereof. That during the time Goculkissore Seat had the management, many houses were purchased with the joint funds, and particularly the several houses and gardens described in the schedule B to bill annexed. That, according to the laws and customs of the hindoos complt. as the only son of Nobkissore Seat became entitled, upon the death of Goculkissore Seat, to the whole of the real estate both of Goculkissore Seat and Nobkissore Seat; the same never having been divided, and deft. Sree Mootee Tonoomoney Raur being entitled only to a maintenance thereout during her life. That complt. now has a right of choosing a guardian or guardians of his person and fortune. That since the death of Goculkissore Seat, Sree Mootee Tonoomoney Raur hath collected a large sum of money on account of the rents of the said lands and also received debts due from different persons to the joint estate, but to what amount he hath been unable to discover. That said Sree Mootee Tonoomoney Raur, having so entered upon and possessed herself of such real and personal estate and thereout received and raised considerable sums of money, complt. hoped that she would have come to a fair and just account with him touching the same and have paid complt. what should appear justly due to him in respect to the premises, and that the money so due and owing and belonging to complt. as afsd. would have been from time to time put out and improved for the benefit of complt. and to the best advantage as the same ought in equity and justice to have been done, but which she has altogether refused to do. Therefore that she may be compelled by the decree of this Court to deliver up to complt.'s guardian appointed by this Court or to such

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other person or persons as the Court shall direct as well all and singular the houses, lands and hereditaments which Luckicaunt Seat died seized, possessed of or entitled unto, as also all bonds, securities for money, deeds, pottahs, muniments, books of account, papers and vouchers belonging to and the property of or relating to the estate of Luckicaunt Seat, Goculkissore Seat and Nobkissore Seat; and to come to a fair and just account with complt. touching and concerning all and every sum and sums of money received by her or by any other person or persons on her behalf or under her authority, which at the time of the death of Luckicaunt Seat was his property or which has been at any time since his death bought, purchased or produced by joint accumulating funds of the grandfather, father and uncle or any of them; and that both the defts. may be respectively decreed such maintenance or allowance out of the estate as shall appear just and equitable; and that a just and fair account may be taken of all money received by Tonoomoney Raur or under her authority, whether on account of rent of houses or lands or by sale of goods, wares, merchandize, effects or otherwise; and that the money due on such account may be placed out at interest in the Company's or some other safe and secure funds or on some good and sufficient security for the use of complt. either in his name or that of his guardian; and that in the mean time Tonoomoney Raur may be restrained by an injunction from receiving any part of the rents, issues or profits and from selling, mortgaging or disposing of any of the houses, lands and tenements or hereditaments or selling negotiating, mortgaging, cancelling, releasing or otherwise destroying or disposing of any of the bonds, notes, bills or other securities for money of the said estates; and for further relief is the scope of the bill.(*a*) WHEREUPON

(*a*) The bill is signed by Mr. Burroughs: it was filed 15th Jan. 1794.

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the counsel for the deft. Sree Mootee alledges, that she by her answer [admits the case in the bill (*a*)]. And the counsel for the said other deft. Sree Mootee Tonoomoney Raur alledged; that she, by her answer, admits that complt. Rajekissore Seat was, at the time of answering, an hindoo and an infant about the age of thirteen years; that Luckicaunt Seat was also a hindoo inhabitant of Calcutta, and did depart this life sometime A. X. 1758, he leaving issue two sons, Nobkissore Seat and Goculkissore Seat, the former of whom was the complt's. father, both hindoo natives of Bengal and since deceased. Saith that Luckicaunt Seat died possessed of property real and personal to a very considerable amount, but what amount deft. does not know nor can set forth. Admits that, upon the death of Luckicaunt Seat, Goculkissore Seat and Nobkissore Seat were, by the laws and customs of hindoos, entitled to all his goods and chattels, rights, credits and effects. Saith, at the death of Luckicaunt Seat, Nobkissore Seat and Goculkissore Seat were infants and incapable of taking upon themselves the charge and management of the estate; that, in consequence thereof, all the property real and personal was taken possession of by Sree Mootee Jasodah, the widow of Luckicaunt Seat, and was managed by agents under her direction until A. X. 1769. Does not know whether about the

(*a*) With reference to the question of law raised, she says "she is advised and is therefore willing to admit that, according to the laws and customs of the Hindoos, the sd. complt., as the only son of the sd. Nobkissore Seat, became entitled, upon the death of the sd. Goculkissore Seat, to the whole of the real estate of the complt.'s sd. uncle Goculkissore Seat and of Nobkissore Seat complt.'s sd. father, this deft. at the same time admitting, that she has heard and believes the sd. estate remained joint and never was divided. And this deft. further saith, she hath been advised and therefore believes, that the sd. Sree. Tonoomoney Raur is entitled to a maintenance only from such real estate, during her natural life, and nothing more." The answer is signed by Mr. Shaw.

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bengal year 1174 or at any other time Sree Mootee Jasodah caused any account of the estate of Luckicaunt Seat to be taken, nor whether the same amounted to Ct. Rs. 82,243 or what sum in particular; nor does she know whether the account A annexed to bill contains the particulars of said estate in that or any other year, but saith, schedule A has been explained to her and she believes that the estate might have consisted of the several particulars therein mentioned, but leaves the same to be proved. That she does not know when Sree Mootee Jasodah departed this life, but believes that immediately on her decease Goculkissore Seat, the eldest son of Luckicaunt Seat and who might have been then of the age of twenty years, took charge of the whole of the property of Luckicaunt Seat, consisting, as deft. believes, of plate, jewels, household furniture, shawls and piece goods of various kinds, but whether in particular of the several debts, houses, lands, property and effects mentioned in schedule A she does not know, but believes that the same will appear by the books of account and papers belonging to the estates, which were kept about that time and were at the time of answering locked up in a room the key of which is in the possession of one Choitunchurn Seat, who keeps the same by and with the consent of deft. and of Ramgovind Bysack the pretended next friend of complt. Admits, that Goculkissore Seat continued to manage the same with the concurrence of Nobkissore Seat, for their joint benefit, until the time of the death of Nobkissore Seat, who died some time A. X. 1789, leaving a widow by name Sree Mootee who is an inhabitant of Calcutta and therefore subject &c., and Rajekissore Seat his only son, him surviving, and also a daughter named Parbutty Dossee. Admits, that upon the death of Nobkissore Seat complt., by the laws and customs of the hindoos, became entitled to all the property of his father (unless Parbutty Dossee, the daughter, is entitled

to any share thereof) and that Sree Mootee, the complt's mother, is only entitled to a maintenance for life therefrom. Admits, that Goculkissore Seat continued in the management of the estate, for the benefit of himself and complt., from the time of the death of Nobkissore Seat until the 18th August A. X. 1792, when Goculkissore Seat also departed this life, leaving this deft. his widow him surviving, without issue male or female. Admits, that she is an inhabitant of Calcutta and therefore &c. Denies, that, upon the death of Goculkissore Seat, she possessed herself of the whole of the joint property; but saith, that the same was managed for some time by one Samsoonder Roy, a servant of the said Goculkissore, under the direction and controul of Sree Mootee the mother of complt. Says, that she, this deft., being apprehensive the estate was not managed properly, and having just reason for such suspicions, she did, in the month of July 1793, possess herself, for the first time, of the whole of the said joint property, not only on account of of the infancy of complt., but also in her own right as entitled as the widow of Goculkissore Seat to his half share or moiety of the estate of Luckicaunt which descended in common to Goculkissore Seat and Nobkissore Seat; and that she from that period continued to collect the rents of the houses and property of the estate and to defray the family expences, and did offer to support the family out of such joint property until complt. should come of age and to account with and deliver over one half share or moiety of such property to whoever should be intitled to receive the same and to have the guardianship of complt.; which offer she again repeats by her said answer, but insists that she is entitled to the other one half or moiety which was the right of her said husband Goculkissore Seat, he having died without issue male or female and leaving her his only wife him surviving. Admits, that during the time Gocul-

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kissore Seat had the management of the estate, many houses were purchased with the monies belonging to the joint funds, and admits the several houses and gardens described in the schedule B. to be the property of the joint estate, but cannot set forth at what particular times and by whom they were purchased, but believes that several pieces of ground, which she specifies, were purchased in the lifetime of Goculkissore Seat and Nobkissore Seat and since the death of Luckicaunt Seat. Insists, that complt., according to the laws and customs of the hindoos, as eldest son of Nobkissore Seat, did not become entitled, upon the death of Goculkissore Seat, to the whole of the real estate of Goculkissore Seat and Nobkissore Seat, the same never having been divided. Does not admit that she herself is entitled only to a maintenance for life from such real estate; but, on the contrary, insists, that complt., by the laws and customs of the hindoos, is only entitled to one half share or moiety of the joint estate, and that she this deft. is entitled to the other half. Admits, that, since the death of Goculkissore Seat, she has collected several but not large sums of money on account of the rents of said lands and has paid several sums of money on account of the estate, a just and true account of which is annexed to her answer and marked No. 1. Denies having received any debts whatsoever due to the joint estate of Nobkissore Seat and Goculkissore Seat. Admits, that she did not discover to complt. what she had received belonging to the estate; but that complt. or any person who had a right to the same on his behalf might have known it by application to deft. Saith, that schedule No. 1 contains a just, true and particular account of all monies, houses, lands, property and effects whatsoever, real and personal, which have ever come to her hands, custody or power belonging or in any way relating to the joint estate. Denies having ever possessed any other estate, either belonging to Nobkissore

Seat, Luckicaunt Seat or Goculkissore Seat, or having raised any money other than what is mentioned in schedule No.1. Saith, that she was always ready and willing to come to an account of the whole property with complt. or any other person on his behalf who had a right to the same; and admits, that, having entered upon and possessed herself of Nobkissore Seat's estate and received several sums of money therefrom, complt. had good reason to hope that she would have come to a just and fair account with him touching the same, which she says she was always ready to do; but whether, complt. being an infant, she should pay and answer to him what should be due to him in respect of the premises, she submits to this Court and says, she always was and is now ready to pay and deliver over the same to such person or persons as have right to the care of the same for him or may be appointed by this Court to receive the same. Saith, that the monies received by deft. have nearly been expended, as appears by schedule No.1, and the balance in her hands is so very trifling, that she conceives it necessary to retain the same, to answer the family and the other expences of managing the estate, and has therefore not laid the same out at interest. Denies having possessed herself of all or any of the deeds, pottahs and writings belonging to the estate of Nobkissore Seat; but says, that the same are locked up in a room by the consent as well of deft. herself as of one Nytachand Bysack, complt.'s uncle by the mother's side, and Ramgovind Bysack, both on behalf of complt., the key whereof is, by consent of all parties, in the care or possession of Choitunchurn Seat, the mutual friend of this deft. and complt., and of Ramgovind Bysack the next friend of complt. Denies having ever refused to come to an account with complt. touching the rents, issues or profits of either of the real estate or the particulars or value of the personal estate of Nobkissore Seat dec. or how

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deft. hath administered or disposed of the same. Denies ever pretending that complt. being an infant she need not account with him during his minority or that Nobkissore Seat was, at the time of his decease, indebted to divers or any persons on his own separate account or that Goculkissore Seat in his life time paid divers or any sums of money on Nobkissore Seat's account; but, on the contrary, saith, that Nobkissore Seat and Goculkissore Seat were a joint hindoo family and acted jointly together in all transactions and concerns and were never divided or had separate debts or transactions, and therefore she believes Nobkissore Seat died free of all separate debts. Denies ever pretending that Luckicaunt Seat died in indigent circumstances and possessed of no property whatever or that the property which Goculkissore died possessed of was acquired by himself or that Nobkissore Seat had no claim thereon; on the contrary, she admits that Luckicaunt Seat did die possessed of very considerable property, in debts, houses, lands and other effects; but whether of the property in schedule A and B she cannot say. Admits that all the property the said Goculkissore Seat died possessed of was undivided and belonging to the joint estate and that there was no separate or divided property whatever. Denies that Goculkissore Seat did separately (but admits he did jointly and with concurrence of said Nobkissore Seat) manage said joint estate, from the time of the death of Sree Mootee Jasodah until the death of Nobkissore Seat, and from the death of Nobkissore Seat to that of Goculkissore Seat himself. Denies that she ever pretended that Luckicaunt Seat died possessed of some but of inconsiderable property; for she admits the same to have been very considerable. Denies that she ever pretended that the estate was divided in the lifetime of Nobkissore Seat or that Nobkissore Seat received in his lifetime his full share thereof; for, on the contrary, deft. saith, that the estate has

never been divided, but is still joint and undivided. Denies combination and concludes generally. (a) AND WHEREAS by decree or decretal order of this Court made in this cause on the 11th day of February A. X. 1800, It was ordered and decreed, that Thos. Scott, Esq., one of the masters of this Court, should take an account of all and singular the houses, lands, tenements and hereditaments of which Luckicaunt Seat in the pleadings mentioned died seized, possessed of or entitled unto; as also an account of all bonds, securities for money, deeds, pottahs, muniments, books of account, papers and vouchers belonging to or the property of or relating to the estates of the said Luckicaunt Seat and of Goculkissore Seat in the pleadings also mentioned; and also of all and every sum and sums of money received by the deft. Sree Mootee Tonoomoney Raur or by any other person or persons for her use or on her behalf or under her authority, which at the time of the death of the said Luckicaunt Seat was the property or was or had been at any time or times since his death bought, purchased or produced by the property or estate of the complt.'s grandfather or of the complt.'s said father and uncle, or any or either of them; and that the said Master should consider and report to this Court, what was a proper allowance to be made for the maintenance and support of the said Tonoomoney Raur and the said Sree Mootee respectively; and that the said Master should also take an account of all and singular the sum and sums of money received by the said Tonoomoney Raur or by any other person or persons on her behalf or under her authority, whether on account of rents of houses, land or by sales of goods, wares and merchandize or otherwise. And it was further ordered, that an injunction should issue out of and under the seal of this Court to restrain

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(a) This answer is signed by Mr. Strettell.

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the said Sree Mootee Tonoomoney Raur from receiving any part of the rents, issues and profits, and from selling, mortgaging or otherwise disposing of any of the houses, lands, tenements and hereditaments, or selling, negotiating mortgaging, pledging, cancelling, releasing or otherwise destroying or disposing of any of the bonds, notes, bills or other securities for money in the bill of complaint and in the schedule thereunto annexed particularly mentioned. And it was further ordered, that the said Master should make his report of the several matters thereby referred to him on or before the 3rd day of March then next. AND WHEREAS the said Master Scott had by several orders made by this Court in this cause bearing date respectively, &c. further time until the first day of the first term in this present year 1801 to make his report upon the several matters in reference before him in this cause. AND WHEREAS the said Master Scott on the seventh day of January, 1801, made his report to this Court of the several matters in reference before him in this cause in the words and figures or to the purport and effect following, that is to say: "In pursuance of an order made at the hearing of this cause and bearing date &c. directing me &c., I have issued the usual warrants, and have been attended by the solicitors on both sides, and I have, in the presence of the said parties so attending me, proceeded to take the several accounts so directed; and I find, that, owing to the decayed and mutilated state of such of the papers and books of the estate of the late Luckicaunt Seat in the pleadings mentioned as still remain, no account has been filed or could be framed by either party of the amount of said estate at the decease of the afsd. Luckicaunt Seat, or of what the same consisted, or whether any or what part of the same came to the hands of Sree Mootee Tonoomoney Raur or to the hands of any other person or persons on her behalf or for her use or under her authority; and I find, that, after

the death of Luckicaunt Seat his estate was for several years managed by or under the direction of his widow Jasodah, whose accounts have not been produced before me, the same being sworn to have been destroyed in like manner as those of her husband by damp aud vermin while deposited in the public offices of this Court. And I find, that, on the death of Jasodah, the estate of Luckicaunt Seat came to the possession of Goculkissore Seat as brother of the same undivided hindoo family, the sole management of the same being left to the elder brother Goculkissore Seat, whose accounts during said joint possession have not been produced before me, the same having been destroyed or injured by damp and vermin as afsd. And I find, that, at the death of Nobkissore (complt's father), the real and personal estate of the afsd. Luckicaunt Seat, consisting of lands and houses, of plate and household furniture to a considerable amount, still remained in the hands and under the sole management of Goculkissore Seat, who held the same from the date of the death of the said Nobkissore Seat, in the Bengal year 1196, answering to the English year 1789, until his own death, on the 5th Bhadro in the Bengal year 1199, answering to the 18th August in the English year 1792. And I find, that, during the time the said Goculkissore Seat had the sole management of the estate as afsd. he did not give the just credits to the estate which he ought to have done, he not having brought forward, in favor of the estate, the true balances of each year respectively; as will more fully appear by the schedule hereunto annexed marked with the letter A, in which the real and false balances appear; from which omission, the joint estate has not received the credit it ought to have done by the sum of Sa. Rs. 6,579-5-3. And I find, that, at the death of the said Goculkissore (the uncle of the complt. as afsd.), the whole estate, real and personal, which had come to his hands at the death of Nobkissore Seat (as is fully set forth

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in the schedules hereunto annexed and marked B and C) came to the hands of Sree Mootee Tonoomoney Raur or other persons for her use or on her behalf and under her authority. And I find, that the accounts of the rents and profits and disbursements of the estate, for seven months subsequent to the death of Gocul-kissore Seat, have not been laid before me by either party; the complt. alledging, that the estate was under the management of Sree Mootee Tonoomoney Raur, while she denies the same, and contends, that the estate was managed by certain sircars on behalf of the complt.; as will more fully appear by the affidavit hereunto annexed marked with the letters D and E respectively. And I find, should the Court be of opinion, that the said estate was under the management of the said deft. for the period of seven months as afsd., she will be to account to the complt. for the sum of Sa. Rs. 1,535-9-10, in addition to the further sum admitted by her to be due and hereinafter stated; the said sum of Sa. Rs. 1,535-9-10 being the amount she ought to have had in her hands according to the average of the six subsequent years, allowing her in like manner a proportion of the disbursements taken at an average of a similar period of time; the whole receipts for six years having amounted to the sum of Sa. Rs. 23,835-6, and the disbursements during the same period having amounted to Sa. Rs. 8,240-8-6. And I find, that the said sums received by the said Tonoomoney Raur or persons acting by or under her authority, from the Bengal year 1200 to the Bengal year 1206, both inclusive, whether on account of rent of houses or lands, amounted to the sum of Sa. Rs. 23,835-6, as will more fully appear by the schedules hereunto annexed marked F. f. And I find, that the expence attending the management of the estate by the said Tonoomoney Raur and the sums paid for ground rent, taxes and repairs, during the period in which the said sum of Sa. Rs. 13,335-6 were so collected or received, or from

the year 1200 to the year 1206, both inclusive, amounted to Sa. Rs. 8,694-9; leaving a balance still due and owing, from the said Tonoomoney Raur to the estate, of Sa. Rs. 15,141-5-3. And I find, that the said Sree Mootee Tonoomoney Raur declines (by her solicitor, as will more fully appear from his letter to me hereunto annexed and marked with the letter G) laying any statement before me, to enable me to consider and report upon a proper allowance to be made for her maintenance; she claiming half of the whole estate as her sole right, her late husband Gocul-kissore Seat having died without issue. And I find, from the affidavits of Goluck, a sircar in the service of the deft. Sree Mootee the mother of the complt., and of Luckun Doss, and the list to said last mentioned affidavit annexed and marked with the letters H. I. and K. respectively, that the sum of S. Rs. 40 will be sufficient for the monthly maintenance of the deft., Sree Mootee, as well because that the charges therein stated are moderate as that the said deft. by her solicitor has declared that the said sum of Sa. Rs. 40 each month is adequate to her support and that she is satisfied to receive the same in lieu of and in full satisfaction for her claims on the estate of what nature or kind soever. All which I humbly certify and leave to the judgment of this Hble. Court." AND WHEREAS by an order of this Court, made in this cause on the said 7th day of January, it was ordered, by and with the consent of the advocates on both sides, that the report of Thos. Scott, Esq. one of the masters of this Court on the several matters in reference in this cause be received and read. AND WHEREAS by another order of this Court made in this cause on the said 7th day of January, it was ordered, by and with the consent of the advocates on both sides, that the said report of Thos. Scott be confirmed; and the same was thereby confirmed accordingly. AND WHEREAS by an order of this Court made in this cause on the 22nd day of the said month of January it was ordered, that this cause should

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be set down in the paper of causes for the further directions of this Court, on the said report of the said Master Scott, for the sittings after the then present first term. AND WHEREAS by an order of this Court at the second hearing of this cause, bearing date the 25th day of February in this present year 1801, it was ordered, that Thos. Scott, Esq. should forthwith take an account of short credits due from Goculkissore Seat in the pleadings in this cause mentioned to the estate of Luckicaunt Seat, during the time the estate of the said Luckicaunt Seat was under the management and controul of the said Goculkissore Seat, and should calculate interest on such short credits, making annual rests thereon, from the day of the death of the said Goculkissore Seat until the date of the report thereinafter directed to be made by the said Master, upon one full moiety or half part of the balance of such short credits, and which said short credits are mentioned in the report of the said Master Thos. Scott filed in this cause on the 7th day of January last past and in the schedule A annexed to the same. And it was further ordered, that the Master should also take an account of what sum or sums of money, if any, have been disbursed or expended by the deft. Tonoomoney Raur for or on behalf or on account of the complt. in the performance of necessary or requisite religious ceremonies, according to the custom of hindoos of the complt.'s cast. And it was further ordered, that the said Master should also take an account of the whole of the personal estate, effects and property of the said Luckicaunt Seat dec. as it then stood; specifying particularly in what the same consist, and then dividing the whole into two equal moietys or half parts, charging in such division to the debit of the deft. Sree Mootee Tonoomoney Raur one moiety or half part of the sum of Rs. 1,535-9-10 mentioned in the said report of the said Master, and also one moiety or half part of all sums which have been or

should be received up to the day of the date of the said thereby directed report by the said deft. Sree Mootee Tonoomoney Raur, either on account of the complt. or of the estate of the said Goculkissore Seat dec. And it was lastly ordered, that the said Master should make his report of the several matters thereby referred to him with all convenient speed. AND WHEREAS the said Master Scott on the 18th day of May in the said year 1801 made his report to this Court of the several matters in and by the said last mentioned order referred to him, in the words and figures or to the purport and effect following, that is to say; "In pursuance &c. I have, in the presence of the parties, proceeded to take the account as directed; and I find, that a moiety of the short credits due from Goculkissore Seat (as admitted by both parties) amounted to Sa. Rs. 3,290 on the day of the death of the said Goculkissore, and I have calculated interest at the rate of ten per cent. per annum on the said moiety, making annual rests from the date of the said Goculkissore's death up to the 18th of May last (the day of the date of this report). And I find, that the principal and interest of such moiety amounted on the said 18th May to Sa. Rs. 7,572-15-6, as will more fully and at large appear from the schedule hereunto annexed and marked A, reference being had thereunto. And I find, that the deft. Tonoomoney Raur has expended (as admitted by both parties), for or on behalf or on account of the complt., in the performance of certain religious ceremonies, according to the customs of hindoos of the complt.'s cast, the sum of Sa. Rs. 581-1-3, as will more fully appear by the schedule hereunto annexed and marked with the letter B. And I find, that, from the mutilated state of the books of the estate of Goculkissore Seat, owing to damp and vermin, what the property of the said Goculkissore consisted of cannot be ascertained exactly. And I find, that it appears from a former report of mine filed in this cause and

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bearing date &c. that the amount of the property of Goculkissore Seat, at the date of said report (as admitted by both parties) was Sa. Rs. 16,614-0-8, to a moiety of which sum viz. to the sum of Sa. Rs. 8,307-4 I find that the complt. is entitled. And I find, that the complt. is entitled to the sum of Sa. Rs. 1,100, being the moiety of monies received by the deft. on account of the estate of the afsd. Goculkissore Seat, for rent of the Bengal year 1207, ending on the 9th day of April in the English year 1801. And I find, that the complt. is entitled to the sum of Sa. Rs. 765-4-11; being the moiety of the sum of Sa. Rs. 1,535-9-10 mentioned in my afsd. report, and by the order in this cause bearing date the 24th day of February directed to be allowed in account by me to the complt. afsd. And, finally, I find, that the complt. is altogether entitled to the sum of Sa. Rs. 17,164-7-2, being the full amount of a moiety of the different sums received as afsd. or on other accounts; as will more particularly appear from the schedule hereunto annexed and marked with the letter C, reference being had thereunto. All which &c. AND WHEREAS on Thursday the 18th day of June last, upon motion made by the counsel for the complt., and upon reading a certificate of the Register, it was ordered, that the report of Thos. Scott, Esq., one of the masters of this Court, on the several matters in reference before him in this cause, filed on the first day of June then instant, should be confirmed unless &c. AND WHEREAS on Monday the said 22nd day of June, upon motion that day made by the complt.'s counsel, and upon proof made &c., that the deft. had been duly served &c. and no cause being shewn &c., it was prayed, that the said order might be made absolute; which was ordered accordingly. AND WHEREAS by an order &c., it was ordered, that this cause should be set down &c. WHEREUPON and upon hearing the advocates on both sides, THIS COURT doth think fit to order and decree, and doth accordingly order

and decree, that deft. Sree Mootee Tonoomoney Raur do forthwith pay to the complt. Rajkissore Seat the sum of Sa. Rs. 17,164-7-2, being so much money reported due to him from the said deft. in and by the said last report of the said Master Scott bearing date the 18th day of May last and so as afsd. filed, read and confirmed. And it is further ordered and decreed, that the receivers (*a*) of the estate in the pleadings in this cause mentioned be discharged from their respective offices, and that possession of the said estate be delivered to the owners thereof. And it is lastly ordered and decreed, that the costs of the complt., Rajkissore Seat, in this cause be paid and borne by himself, and that he the said Rajkissore Seat do forthwith pay to the deft. Sree Mootee her costs in this cause, to be taxed by one of the Masters of the Court. And lastly, it is ordered, that the costs of the deft. Sree Mootee Tonoomoney Raur in this suit be paid and borne by herself.

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(*a*) Woodychund Bysack and Lollchund Bysack had been appointed receivers on the 6th April, 1801, upon complt.'s petition, stating, that Sree. Tonoomoney Raur disregarded the injunction and "received and still continues to receive the rents, issues and profits of the houses, lands and tenements afsd. and has done so for the last eight years without paying over to yr. petr. any part thereof for his subsistence and support or that of his mother the other deft. Srî Mooty or tendered to pay over any part thereof." This statement is verified by the affidavit of a sircar.

NOTE IX.

REFERENCE TO PUNDITS.

In a cause lately tried these facts were proved.

That, many years ago, K, the defendant, being a hindu, married G, the lessor of plaintiff, who is a hindu woman of the same cast, according to the ceremonies used by others of that cast.

That G had, by her husband, many sons and daughters, of whom all the sons died long before the year 1193, but some of the daughters are still living: that, in that year, K, by advice of his friends and for the purpose of having male issue, married I, with whom he received no marriage portion but a small present from her father of clothes, ornaments and furniture. That, previous to the last mentioned marriage, G, quarreling with her husband on that subject, threatened, that if he married another woman she would destroy herself or quit his house and live elsewhere. That, in consequence of these threats of his wife, and in order to pacify her, K signed a paper, of which a copy is hereunto annexed, whereby he gives her, among other things, three dwelling houses and a half and a garden with the dwelling house formerly Rogonath Sircar's, without saying whether for life or for ever. It appears, that one of those houses came to K from his father, and the rest were purchased by him. It appears also that, beside the houses so conveyed, he was, at the time of the conveyance, possessed of two other houses, consecrated to Sheva, from which he received rents, and out of those rents provided things necessary for the idol. It appears, that I had no child, but that G has born children to the defendant K, since the execution of the beforementioned paper, and one particularly since process was commenced by her against her husband.

It appears, that K did not deliver possession, according to the writing, either of the premises in question or of the other things conveyed by the same writing, but that G continued to live in one of the houses, as she had done for many years before. To obtain the possession of the abovementioned four houses and a half, she has now, by the assistance of her brother, brought an action against her husband.

Qu. 1. Does a gift made by a husband to his wife, in such a manner and on such an occasion as has been stated, give the wife a right to sue her husband for the property so given?

Qu. 2. Is such a gift to be understood as a gift for life only; or, has

the wife a right to sell the houses in her lifetime, or to devise them at her death?

Answer of the pundit Goverdhun Cowleh Shermoneh (translated by Mr. Chambers):

1. Whatever property a man that has married two wives has given to the first wife, by means of a paper witnessed, in order to satisfy her in all respects, such property, termed *adhi-veda-nikam* i. e. given by one who marries another wife, is the property of the wife.

In order to recover such property of females as is called *adhi-veda-nikam*, the wife may sue the husband, according to what the Dherem Shaster directs, in like manner as when a debt is recovered.

Authorities: On this subject Yogniu Valkiu, the chief of the Munnies, has spoken thus, as recorded in the *Daya-bhâg*; That which father, mother, husband, has given, is called *adhi-ugnu-pagatam* (gotten near the fire*), and it is also called *adhi-veda-nikam*: this is what is termed *stri-dhanam* or the property of females.

On the same subject, Katiyayen Muniver has spoken thus;

Neither a husband, nor yet a son, nor a father, nor brothers, have a right to appropriate *stri-dhanam*, or the property of females; and if any of these shall possess himself of such property by force, he must be made to restore it with interest and must be well chastised.

In the *Dáyetut*, where it treats of the property of females, such property is termed *sowdayekam stri dhanam*. That what is obtained from a husband or from parents, I reckon to to be *sowday-ekam* (i. e. given for a good purpose); and when women obtain *sowdayek-dhanam*, it implies that they have the power of disposing of it.

2. The property of females, which is termed *adhivedenikam*, is theirs as long as they live. A woman has power over this kind of property, to sell &c., if it be not immoveable property, and she has also the power of disposing of it at her death, if it be not immoveable property; and whatever immoveable property &c. remains after her death will descend to the lawful heirs in succession, that is to say, to her children, husband, father, mother &c.

Authorities: On this subject, Katiyayen hath spoken as follows;

What the husband has given to the wife, let her keep in his absence (or, after his death) in any manner she pleases. If he be present (or, living), let her take care of it, if not, let her deliver it to some of his relations. Let the wife dispose of the property given her by her husband

* i. e. the fire called *hôm*, which makes part of the ceremony of a hindu marriage.

in any manner she pleases when the husband dies; but while he is alive let her keep it.

On this point Nared has spoken, as quoted in the *Dayebhág*, as follows;

Whatever the husband of his own pleasure has given to his wife, let the wife, when he dies, expend or give away as she pleases, excepting only the immoveable property.

On this also Devala hath spoken thus;

The property of the wife is to be divided equally, after her death, to sons and daughters; but if she be without children, let her husband take it, or else her mother or her brother, or even her father.

Answer of the pundit Ramcheren Shermonoh (translated by Mr Chambers):

1. It does. On this I here write the particulars;

Whatever property the man who has married two wives has given to the first wife, that property is called *adhi-bedanik stri dhon*. Neither husband, father, son or brother have any power to seize such property, or to give it away in charity. If any of these persons shall possess himself by force, of this property, the magistrate shall cause him to restore it, with interest, and shall chastise him, on a complaint being made. The great and learned Jimut Bahun and others have determined this, according to the Dharma-Shaster.

2. As long as she lives, the wife has a right to sell the *stri dhon* given her by her husband, unless it be immoveable property; and at her death she may also devise it, if it be not what is termed immoveable property. A woman can only have the use and occupation of immoveable property, and afterwards it will descend to the heirs of *stri dhon* or female property.

NOTE XIII.

REFERENCE TO PUNDITS.

CASE: On the 18th day of August 1781, and about one year before his death, Juggulkissore Addie executed the paper writing herewith sent and marked with the letter A. Juggulkissore Addie then had a wife named Kissoree Dossee, and by his said wife had one son, named Nundololl Addie, and one daughter, named Alungoe Dossee, who was married and had a son living at the time of the execution of the said paper writing A. When Juggulkissore Addie died, his son Nundololl Addie was without any issue, although he had been some years married. Previous to the execution of the paper A, Juggulkissore Addie had consulted with one of his friends, who is a subscribing witness to that paper, with respect to the disposition of his estate; and about a year afterwards, and shortly before his death, he sent for the same friend, and told him, he wanted to make some alteration in his Will, and that, in case Nundololl should not have any issue, his, Juggulkissore's, grandson by his daughter should be the proprietor of his fortune. This said friend then informed him, that he was coming to Calcutta and would call upon him again. The said friend was prevented by business from doing so, and went up the country, and about four weeks afterwards returned, but never again saw Juggulkissore Addie, whose body, at the time of his said friend's return, was taken to the river side; and Juggulkissore shortly afterwards died, leaving his wife, his son, his daughter and her son abovementioned, surviving, without making any new Will in writing. Nundololl Addie survived his father some years, and died leaving one son, Dialchundro Addie, who was born after the death of Juggulkissore Addie, and about two years prior to the death of his father. A contest, relative to one half of the estate of Juggulkissore Addie, has arisen, between Kissoree Dossee and Dialchundro Addie; and your opinions are desired on the following questions:

Qu. 1. Whether a Hindoo, who has himself acquired all his property, can lawfully give, by his Will, one half thereof to his wife, and the other half thereof to his only son?

Qu. 2. Whether a Hindoo, who has not any property except such as descended to him from his father or ancestors, can lawfully give, by his Will, one half thereof to his wife, and the other half thereof to his only son?

Qu. 3. Whether the paper writing A, purporting to give the joint management of his whole property to his wife and to his only son, is valid or invalid, with respect to the management of his said property?

Qu. 4. Whether the said paper writing A, if not valid with respect to the management, is valid with respect to the disposition of the property; so as that his wife, under the same, can have a legal right to the possession and use of one half of the property, and a legal right to bequeath, give away, or otherwise dispose thereof?

Qu. 5. Whether the said paper writing is, under the circumstances above stated, wholly valid or invalid?—and, if valid in part, and invalid in part, you will distinctly state,—in what part or parts it is valid, and in what part or parts it is invalid, together with the reasons and authorities on which your opinions are founded.

PUNDITS' OPINIONS

Opinion of Goverdhun Cowl Surmah:

A person who has himself acquired all his property can lawfully, during his life-time, divide his estate into equal shares, and bequeath, by Will, one half unto his wife and one half unto his only son.

(Menu) A person may dispose of his own property according to his own inclination and pleasure.

Nared Muni also says; A person holding in his own free possession property of his own acquiring, has a right to dispose of the same as he pleases.

In the *Meetakhsora*, Jaggia Valkia Muni says; If a person makes a division of his estate, let him divide it into equal shares, and consider his wife as a person entitled to receive one of those shares.

2. A grandson is entitled to a share of his ancestor's estate, through his father. Thus says Nared. The father therefore first becomes proprietor of the estate and has a lawful right to divide it into shares and to give one share to his wife and one to his only son.

Jaggia Valkia says, in the *Meetakhsora;* During the life-time of the father, neither the sons or grandsons have any power over the property descending from ancestors.

It is thus written in the *Daya Bhaug*: The property descending from ancestors is to be divided according to the pleasure of the father.

3. The management which the proprietor of the property has given, by writing, of his estate, to his wife and son, is valid, both

according to the said writing and Dharma-Shaster. If they separate, they manage their respective shares. Thus says the Dharma-Shaster.

Nared Muni, in the *Daya Bhaug*, says, on this head; After the separation of proprietors of shares takes place, each individual has a right to give away, sell or keep his shares, as he thinks best.

Kattyaon Muni says; Whatever a woman, married or unmarried, receives from her father or husband is called *sowdayeek*. The woman is mistress of this property.

4. In the Will, the pleasure of the proprietor of the property is thus expressed:—I, of my own free Will, make my wife and son managers and masters of my whole estate—that is to say, I bequeath unto them. From this writing, and according to the Hindoo law, after the decease of the proprietor his wife becomes proprietress of one half of his estate; the benefits or loss arising thereon are hers, and she has a right to the use and possession of the same, as also to give away, or otherwise dispose thereof.

Speaking of *sowdayeek* property, Kattyaon Muni says, in the *Daya Bhaug*, that women have the entire right to dispose of *sowdayeek* property, by sale or gift, even of fixed property.

Byas also says, in the *Daya Bhaug*; Let the woman dispose of what has been given her by her husband as she thinks proper.

5. This query is answered by the four preceding answers; I however answer it fully.

The paper writing A, which gives the management to his wife and son, is valid, under the circumstances stated, and according to the Hindoo law, both as to the management and bequest, and, no other having been made since, it is valid according to the Hindoo law.

Opinion of Ramchuren Surmah:

1. According to the Dharma Shaster, property acquired by a person, or that a person has received from another is at such person's free disposal. A person can therefore, by Will, give one half of his self-acquired property to his wife and the other half to his only son.

2. The father is master of all moveable property, but neither the father or grandfather are entire master of fixed property. This is a quotation from Jaggia Balkia; on which the author of the *Daya Bhaug* makes the following comment; The word grand-father being used, the whole sentence alludes to property descending from ancestors. A person can therefore give, by his Will, one half of what has

descended from his father or ancestors to his wife, and one half to his only son.

3. If the son is more than sixteen years of age, he has a lawful right, under the Will, to the management of the whole estate; should he not have attained that age, the widow has a lawful right to the management, as far as sueing and defending suits; this to be done by people on her behalf authorized by her. If a division takes place, they manage their own respective shares.

4. What is given to a woman by her husband is called *sowdayeek*, also what a woman receives from her father (Katiyaon Muni). A woman has the sole title to this property, and has the right of disposal thereof, either by gift or sale, and the sole right of enjoying the possession of the same, according to her own inclinations. Therefore, according to the writing A, the woman has a right to the possession and use of one half of the property, and a right to bequeath, give away or otherwise dispose thereof. But, Nared Muni says; Whatever a husband has given to his wife, through affection, may be disposed of according to her own inclinations, even after his death; but of fixed property, she has not the power of disposal by gift. Therefore a woman cannot give away fixed property.

5. I have stated, in the four preceding answers, how far the Will marked A is valid. I now consider it under the circumstances stated; and I declare, the Will marked A to be valid, according to the Hindoo law, no written Will having been made at a future period.

*** The above opinions are certified by Mr. Blaquiere to be true translations "as read and explained" to him by the respective Pundits.

Morton showed cause. *Executor*

Ritchie supported the rule.

PEEL, C. J.—It is very difficult to understand what the framer of the Act precisely meant,—indeed to put any construction upon the Act. It does not purport to displace altogether the right which a Hindu or Mahommedan representative ordinarily has, independently of probate or letters of administration. If that had been intended, the object would have been effected by simply enacting, that no representative title should be valid, for the purpose of sueing, until confirmed by probate or letters or the certificate mentioned in the Act. The object of the Act seems to be, to give protection, in certain cases, to parties indebted to Hindu or Mahommedan estates. The question is; to what cases does the protection extend, and how is the protection to be applied. The words cannot be construed literally. A man who does not pay because he is unable to pay, can scarcely be said to "withhold payment from either fraudulent or vexatious motives," though there might be no doubt whatever of the title of the claimant. In the present case however, we were of opinion that there was a bonâ fide though groundless doubt. The Court looks more to the animus of the party, than the substantiality of his objection. A bonâ fide doubt may be raised, though the facts on which the doubt is founded may be altogether erroneous, or the law utterly mistaken. But then, the question arises, how is this to be brought before the Court. We are of opinion, upon consideration, that there must be an appropriate issue raising it. If a plea were pleaded bringing the case of the defendant apparently within the protection of the Act, the plaintiff might either submit to it or reply, according as the case might be. He might choose to submit and, by submitting at an early stage, save heavy costs; and he might then arm himself with probate or letters, and, upon the payment being refused, commence de novo. Or, he might reply, that the debt was withheld from fraudulent or vexatious motives. Then the Court would have a distinct issue to try. Denial of the debt is, clearly, not the appropriate issue to raise the question; nor, denial of the heirship. We think therefore, the nonsuit must be set aside, but without costs.

Rule absolute, without costs.

Hindu Law. (*a*)

AGA HAJEE MAHOMED *v.* JUGGUT SEAT COSSAUL CHUND.

(1779)

Pleading. The custom of Hindus, and the defendant's liability under it, must be averred and shewn in the plaint. (*b*)

Hyde's notes. (*c*) July 19, 1779.

ASSUMPSIT for jewels &c. (to the amount of fifteen lacs Sa. Rs.) sold and delivered to the defendant's father. The plaint, which was filed 3d August 1775, described the defendant, in its commencement, as "eldest son, heir at law, and personal representative of Juggut Seat Mattaub Roy according to the custom of Bengal from time immemorial." There was no promise laid by the defendant, but a breach in non-payment by him since his father's decease as well as by the father in his life time.

THE COURT (*d*) held, that the plaint must in due form set forth the liability of the defendant to pay his father's debts, viz. that there was such a custom among the Hindus, and then bring the case within the custom, and must also aver, that the son possessed himself of effects of his father to the amount of the debt demanded. The Court observed, that possibly the custom of the Hindus might charge the son with all his father's debts, though he possessed himself of a very small sum, much less than sufficient to pay any one of his father's debts, yet that custom could hardly be admitted in this Court, because, by our law, if the son does not pay he may be imprisoned, which is not probably the law of the Hindus. (*e*)

(*a*) Note I.

(*b*) This of course did not apply after 21 Geo. III. c. 70.

(*c*) Corrected by the proceedings of record.

(*d*) Impey C. J., Chambers and Hyde Js.

(*e*) Mr Justice Hyde adds, "Impey C. J. on a former occasion said,—the proper way is, to charge the defendant as executor, and if he pleads he is not executor, then you charge him with possessing himself of the goods of the father and therefore liable as executor de son tort." Issue was joined in this case in July 1776: judgment of non pros had been signed, which must of course have been set aside. It appears from the learned judge's note that, in consequence of the above remarks and resolution of the Court, the cause, which was on the board for trial, was struck out by the plaintiff's attorney.